First Nations Women, Governance and the Indian Act: A Collection of Policy Research Reports

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By

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PREFACE

Good public policy depends on good policy research. In recognition of this, Status of Women Canada instituted the Policy Research Fund in 1996. It supports independent policy research on issues linked to the public policy agenda and in need of gender-based analysis. Our objective is to enhance the public debate on gender equality issues and to enable individuals, organizations, policy makers and policy analysts to participate more effectively in the development of policy.

One such issue on the public policy agenda is First Nations Governance. *Communities First: First Nations Governance* is an initiative of the federal government to amend the *Indian Act*. An important part of this initiative is public consultations, which are to be held throughout the entire legislative process. It is expected this process will last two to three years.

The Policy Research Fund recognized the need to ensure a gender perspective in the public debate surrounding First Nations governance issues. A call for policy research proposals on "First Nations Women, Governance and the *Indian Act*" was issued in April 2001. The following three research projects were selected for funding and appear in this collection of policy research reports:

- **A Strong and Meaningful Role for First Nations Women in Governance**, by Judith F. Sayers and Kelly A. MacDonald
- **First Nations Women and Governance:A Study of Custom and Innovation among Lake Babine Nation Women**, by Jo-Anne Fiske, Melonie Newell and Evelyn George
- **First Nations Governance, the Indian Act and Women's Equality Rights**, by Wendy Cornet.

Status of Women Canada's Policy Research Fund hopes this collection of research reports will support First Nations women and contribute to the ability of individuals and organizations to participate more effectively in the policy development process. We believe that good policy research leads to good policies. We thank all the authors and reviewers for their contributions to this objective.

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A Strong and Meaningful Role for First Nations Women in Governance

Judith F. Sayers and Kelly A. MacDonald

ABSTRACT

This paper illustrates that First Nations governments must once again restore women to their place of honour and respect in governance. The paper takes the reader through history where colonization severely affected women in First Nations communities and resulted in women being put in a very subservient position. Today, women still are not assured a role in governance. Treaties and self-government agreements are being negotiated, with very few women negotiators at the table, or with the counsel of women's advisory groups where issues affecting women are incorporated in the documents. This paper is timely in bringing these issues to the forefront as there are proposed changes to the *Indian Act*, and many places across Canada are negotiating self-government agreements or treaties. The paper reviews what is available in different forms of government, proposes guidelines for different areas in governance and specifically delineates what needs to be in the *Indian Act* or agreements, and in First Nations constitutions or charters to ensure the strong and meaningful role of women in good governance.

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THE AUTHORS

The authors are both First Nations lawyers who have worked extensively on First Nations treaty issues in British Columbia.

Dr. Judith Sayers (Nuu-Chah-Nulth) is elected Chief of the Hupacasath First Nation on Vancouver Island and is Chief Negotiator for the Hupacasath's treaty negotiations. Dr. Sayers has worked extensively at the international, national and community levels. She has been chief for over six years and has had practical experience in governance in communities under the *Indian Act*. The views expressed in this paper are hers alone and not on behalf of her First Nation.

Kelly A. MacDonald (Tsimshian/Haida/Scottish), until recently, worked on behalf of the First Nations Summit, an umbrella group for First Nations engaged in the B.C. treaty-making process. She completed her master's in law degree in 2000 on self-government and First Nations child and family services.

Both authors are committed to the recognition of First Nations' inherent rights to self-government — inherent rights that, in their modern form, should advocate the elimination of sexism and endorse gender equality. The authors carry with them their responsibilities as mothers, for their children and for the children of the next generations.

EXECUTIVE SUMMARY

The authors have compiled a brief but concise thematic review of the literature on First Nations women and self-government. The literature review is divided up into the following subject areas: traditional roles of First Nations women, the impact of colonization on First Nations women, male leadership, contemporary First Nations women and sexual equality, and contemporary First Nations women and self-government. The literature highlights the fact that not only have First Nations women's traditional roles been profoundly affected by colonization and the actions of the state, many First Nations men (and women) have internalized the White male devaluation of First Nations women resulting in a denigration of the roles of women and in the exclusion of women from participation in governing structures.

The authors examined international legal instruments, modern "domestic" treaties and self-government agreements from a First Nations gender perspective and concluded that the modern Canadian treaties and self-government agreements fail to include specific provisions for equality rights for First Nations women.

The crux of this report is found in the section addressing criteria for good governance from First Nations women's perspective. Drawing on their expertise and experience with First Nations governance and treaty discussions, the authors have provided some legislative options, draft policies, recommendations and general discussion of good governance from their perspectives as First Nations women. The options and recommendations provided are meant to assist First Nations and state governments in addressing the concerns of First Nations women for gender equality and accountable governance, with an aim to strengthening the rights of the collective by strengthening the rights of those most marginalized within the collective.

Finally, concluding remarks and observations are provided. It is the contention of the authors that the equality rights of First Nations women must be given serious consideration and every effort must be made by First Nations and state governments to ensure the full and equal participation of First Nations women in governance and at the negotiating tables.

Recommendations

The authors make the following recommendations for First Nations and state policy makers, legislators and negotiators.

- First and foremost, the federal government must fulfil its promise, articulated in *Gathering Strength*, to fund (capacity build) First Nations women's groups, both local and national, to strengthen their participation in self-government processes.

- Ensure the full and equal participation of First Nations women in self-government and treaty negotiations. In British Columbia, this could be done through the B.C. Treaty Commission as a requirement for negotiations. The federal government when entering into self-government negotiations could, as a prerequisite for negotiations, insist that there be women representatives on the negotiating teams.

- Ensure the full and equal participation of First Nations women in governance (both *Indian Act* and self-government structures). This could be achieved through amendments to the *Indian Act* or a requirement for First Nations to put provisions in their charter or constitution to ensure a role for women. Another alternative is to ensure that self-government agreements or treaties have specific provisions for women in governance structures. Onus for this should be equally on First Nations and the federal and provincial governments through policy or legislative requirements.

- Provide support (financial and otherwise) from Status of Women Canada and respective provincial women's ministries and advisory bodies for First Nations women's goals and aspirations, including full and equal participation in negotiations and governing structures. Where possible, core funding should be provided to First Nations women's groups.

- Include gender equality provisions in self-government agreements, treaties, First Nations charters/constitutions.

- Develop strategic vision statements, for and by First Nations, which include the contemporary realities of First Nations women and contribute to the developing First Nations discourse on self-government.

- Have *all* participants in treaty and self-government negotiations (federal, provincial and First Nations negotiators) use a gender lens.

- Ensure federal negotiators, policy makers and legislators adhere to the Indian and Northern Affairs Canada Gender Equality Analysis Policy.

- Use the federal Gender Equality Analysis Policy as a template for provincial and First Nations negotiators in the development of their respective tools for a First Nations women's equality analysis policy.

- Incorporate dispute resolution processes into First Nations' governing structures and prescribe broadly in the *Indian Act*.

- Enact conflict-of-interest laws, for and by First Nations, pursuant to the *Indian Act* or in self-government agreements or treaties.

- Broadly prescribe natural justice rules and procedures into the *Indian Act*.

- Include accountability frameworks for First Nations governments that embody principles of transparency, disclosure, redress and gender equality into First Nations governing structures (pursuant to the *Indian Act* or self-government agreements and treaties).

- Define the rights of members clearly, including such things as voting and access to information on assets held on their behalf.

- Examine the issue of a mechanism to remove leaders and expand beyond what is in the *Indian Act*.

- Accommodate in the revisions of the *Indian Act*, issues related to valuation of homes on reserve, division and possession of on-reserve property and specific issues relating to maintenance and enforcement of restraining orders.

- Have First Nations governments, women's groups and other representative First Nations bodies engage in full and meaningful consultation regarding the proposed governance legislation and its drafting. First Nations and the federal government must establish a consultation process jointly.

- Extend the time frame for the proposed governance legislation to effect meaningful participation and consultation with First Nations.

- Explore the possibility of national or regional human rights panels.

- Investigate the issues related to establishing a First Nations ombudsperson.

1. METHODOLOGY

The authors conducted a comprehensive search of the literature regarding self-government generally and First Nations[1] women and self-government more specifically. Literature from various disciplines, including law, women's studies, political science and government reports was canvassed and analyzed from a First Nations gender perspective. A concise literature review was then compiled to provide readers with a contextual framework from which to analyze policies and options for good governance (governance that embraces gender equality values) that are proposed by the authors, thereby, assisting readers in assessing policy options through a First Nations gender perspective.

Literature was also canvassed regarding good governance and administrative law. This literature was analyzed for its application to First Nations governments in developing gender equality policy or policies that would favourably affect those most marginalized in First Nations communities (women, children, youth and elders). In addition, the authors looked specifically at the various modern treaty agreements and self-government agreements negotiated in Canada and critically analyzed them from a First Nations gender perspective.

Policy areas were identified from the literature and from the experiences of both authors with treaty negotiations and actual experience. Various options were proposed and discussed with the ultimate purpose of creating governance that is sensitive to the traditions of First Nations people and which reflects traditional values of respect and, most important, respect for First Nations women.

The authors consider a gendered First Nations analysis to be one that includes a First Nations perspective specifically through the eyes of First Nations women. One of the authors (MacDonald) considers herself to be a feminist and as articulated by Herbert (1994: 8), a First Nations scholar, committed to feminism:

> ...because [I] realize that so much of our capacity to struggle against oppression, domination and especially racism is diminished by internal oppression and domination caused by collective support among [First Nations] of sexism and sexist oppression.

Feminism in the context of a First Nations analysis is distinguishable from mainstream feminist ideology as it incorporates not only an analysis of patriarchy but includes an analysis of the impact of colonization and state oppression. As articulated in an international document (Vinding 1998: 14) representing the views of many Indigenous women worldwide.

> ...Indigenous women feel very much a part of their family, their community: "It is not possible for us to speak in isolation of indigenous women without speaking of the entire community, of the men, of the children and elderly, and all those who form our community..."

It is in this spirit of community that the authors engaged in a First Nations gendered approach to the analysis and writing of this report.

2. SELF-GOVERNMENT AND THE ROLE OF WOMEN

> Although their numbers are relatively small in an absolute sense, Aboriginal women constitute a vibrant and highly diverse segment of Canada's population, who share a common legacy of marginalization and oppression. The Canadian state, Canadian society in general and the Aboriginal male leadership has paid scant attention to their particular needs and concerns (Dion Stout and Kipling 1998: v).

There is a voluminous amount of literature on self-government in general, much of which was perused in the researching and writing of this report. Unfortunately, almost all of this material was lacking in any sort of gender analysis.[2] In fact, the material was presented gender neutral and therefore did not and could not address the issues specific to First Nations women. This included recent materials that have been produced in the wake of concern about gender equality issues in First Nations communities.[3] The authors consider this a glaring omission and this paper, we hope, can assist in filling in some of the gaps in the literature.

The literature addressing First Nations women and self-governance has been concisely summarized below. It is not meant to be an exhaustive analysis but attempts to provide a framework for analyzing the governance options presented later in the report and to provide a rationale for, and underscore the importance of, First Nations women's issues and concerns regarding governance. Understanding the contemporary reality of First Nations women as doubly oppressed, due to their race and their sex, is crucial for any policy discussions and developments in the area of self-government.[4]

Review of this material has been divided up thematically beginning with a discussion of First Nations women's traditional roles and ending with a discussion of the contemporary roles of First Nations women vis-à-vis self-government and governance pursuant to the *Indian Act* regime.[5]

Traditional Roles of First Nations Women

> The strength that Aboriginal peoples gain today from their traditional teachings and their cultures comes from centuries of oral tradition and Aboriginal teachings, which emphasized the equality of man and woman and the balanced roles of both in the continuation of life (Manitoba 1991: 476).

There are some conflicting opinions expressed in the literature regarding the roles of First Nations women in traditional society. While some authors (Kirkness 1987-88: 409) provided a very idyllic description of a traditional life in which women where highly regarded in traditional native culture and occupied positions of authority in both civil and ecclesiastical affairs, others such as Absolon et al. (1996b) noted that life may not have been so idyllic. All, however, noted that traditional roles were more egalitarian due to the nature of the differing relational practices between First Nations men and women prior to colonization. In addition, the authors were in unanimous agreement that there has been a denigration of First Nations women's roles in contemporary society due to the impact of colonization[6] and as a result: "The cultural and social degradation of Aboriginal women has been devastating" (Manitoba 1991: 480). Furthermore, as Absolon et al. (1996b) and others pointed out, the erosion of First Nations women's traditional roles has gone hand in hand with their contemporary devaluation.[7] Not only are First Nations women devalued by White men, First Nations men (and women) have arguably internalized the White devaluation of First Nations women (Absolon et al. 1996).

Understanding the substantive changes to First Nations women's traditional roles and the ultimate denigration of First Nations women as a result of the institutionalization of European patriarchy is important for critically analyzing the developing discourse on self-government. Many First Nations premise their claims to self-government on their traditional values and practices. Although it is important to be cognizant of how women have been affected by the cultural devastation wrought by colonization, it is equally important to acknowledge, as was done by some authors, that returning to what was "traditional" may not mean returning to a utopian egalitarian society. In fact, as LaRocque (1997: 90) has cautioned "'tradition', 'culture', and 'history' are political handles with many twists that result in the continued oppression and silencing of women." Herbert (1994: 32) articulated the necessity for a modernized perspective on tradition and equality.

> Tradition is not static; what behaviour was deemed traditional 50 to 100 years ago has changed with the socio-political context in which we live today. Given the opportunity to reflect and act with a decolonized view of tradition, a more inclusive and non-oppressive definition of traditional could be created by First Nations women.

It is important to ensure that any framework for First Nations governance, whether pursuant to the *Indian Act* or a First Nations constitution, makes provision to ensure the role of women in governance. Self-government is a prerequisite for achieving equality, human dignity and freedom from discrimination, and full enjoyment of all human rights. To have good governance and to achieve all those objectives, especially equality and human dignity, there must be a strong role for women embedded in the structure of First Nations governments.

First Nations structures of governance need to reflect their culture and values. Traditionally, women had a highly valued role. Women were advisors to the men, held names and gave names to the people according to their potential; some societies were matrilineal and the family line, names, dances, songs, etc. went through the women. Women were teachers. Women were the givers of life. Women chose the leaders of the community. The role of women was endless and varied from community to community.

These assertions are important to reflect upon in the development of any policies and discourse on self-government and governance.

The Impact of Colonization on First Nations Women

> Without question, this legislation [the *Indian Act*] struck at the heart of what was most sacred to West Coast societies. In so doing, it put in question the very survival of these nations... (Yabsley and Mathias 1991: 34).

As set out in the previous section, colonization has had an enormous impact on the traditional roles of women. Tantamount to any discussion of colonization is the effective denial of many First Nations women, and their offspring, to the right to membership in their respective First Nations communities and their right to enjoy "Indian status." The historical disenfranchisement of First Nations women has been discussed at length by many authors[8] and is due to the regressive membership regime in the *Indian Act*. Until 1985, a First Nations woman who married a non-First Nations man lost her membership and identity (status) as an "Indian" whereas if a First Nations man married a non-First Nations woman, his partner gained First Nations membership and status. The impact of these discriminatory provisions was partially ameliorated by the 1985 amendments to the *Indian Act* (Bill C-31); however, as many authors have commented, discrimination against the children of reinstated First Nations women continues.

Loss of membership and status has had, and continues to have, an obvious impact on women's role in First Nations governments. Many newly reinstated members (women) have lived away from and been disenfranchised from their communities for many years. Those who wish to return are often turned away due to housing shortages and continue to be discriminated against because they are Bill C-31 Indians.[9] Therefore, their roles in existing governing structures or in self-government discussions have been effectively curtailed.

To summarize, the effects of colonization have been many and, as the late Chief Joe Mathias enunciated, the *Indian Act* represents nothing short of a conspiracy. First Nations people, especially women have suffered the loss of culture (outlawing of the potlatch and other significant First Nations ceremonies), loss of land (illegal to fight land claims), loss of membership (marriage to non-Native men), loss of children (residential schools) and loss of their traditional roles as First Nations women.

Male Leadership

> First Nations women have too long been excluded from the circle of decision making. This has lead to male bias and has perpetuated the disintegration of harmony between male and female in Aboriginal societies. Such conduct is unconscionable. While colonialism is at the root of our learned disrespect for women, we cannot blame colonialism for our informed actions today. This generation of First Nations men must take some measure of responsibility for the activities in which they engage (Borrows 1994: 46).

Of greatest significance, in relation to the discussion in this report, is the current male-dominated governance of First Nations communities and (as highlighted in the literature) the notable lack of involvement of First Nations women in these decision-making bodies. While there are some First Nations women in leadership positions (including one of the authors of this report), this number is far from representative of the female First Nations population. At the time of writing her report, Anderson (2000: 218) advised that of the 633 chiefs in Canada, only 87 were female. She argued that this is largely due to the imposed Euro-Canadian political system that only validates the voices of men by handing them exclusive authority over the governance of First Nations. What is clear in reviewing the literature from a gendered perspective is that First Nations decision-making bodies "have come to be associated with the protection of male privilege and the domination of Aboriginal women" (Dion Stout and Kipling 1998: 21). This is as a result of the internalized patriarchy and devaluation of First Nations women. The *Indian Act* has contributed to the exclusion of First Nations women from decision-making bodies pursuant not only to the regressive membership regime but to the importation of European governance practices. It is incumbent for First Nations men (and women) to decolonize their attitudes about women and provide room at the negotiating tables and in governance structures for First Nations women to engage in political participation. Professor John Borrows (1994) succinctly summarized the lack of representation of First Nations women as a result of colonization, but underscored the importance of First Nations men in taking responsibility for the continued exclusion of First Nations women. It is also important to remember the complicity of the state and its insensitivity to First Nations women's concerns (NWAC 1992b: 14).

The lack of women's representation in decision making has led to the perception that concerns articulated by First Nations women (accountable governing structures, gender equality and social issues) are not incorporated into the discourse on governance and self-government. Herbert (1994: 27) summarized these issues and highlighted the resultant impact of omitting women from the debate — sexism.

> It is clear that the male leadership of the First Nations organizations do not consider women's rights as a human rights issue. The male dominated discourse on self-government suppresses and denies how much we as First Nations have integrated patriarchy in ourselves, our families, communities and nationalists movements. The situation ignores the reality of gender politics and sustains sexist oppression. Sexist oppression has regulated the lives of First Nations women in two ways, by not recognizing women's rights within collective rights and by violence. Women's rights are defined within a sexist context of being individual rights and therefore seen as not fitting into traditional collective rights ideology.

First Nations scholar Professor Joyce Green (1993) also highlighted concerns regarding the exclusion of First Nations women from the discourse on self-government. In particular, she underscored women's concerns regarding violence in their communities. The implication of omitting women's current realities from the self-government debates is that existing social problems fail to be named and therefore remain unaddressed.

> Violence against women and children has become a primary concern for many Aboriginal women, and is viewed as a priority for the political agenda. Many women worried that male politicians would make decisions around

> constitutional renewal and Aboriginal government structures and processes without integrating women's agenda, or understanding women's reality (Green 1993: 212).

Query then how effective or meaningful self-government and existing governance structures will or can be if the issues concerning First Nations women — issues that are directly autonomous with community well-being and safety — are not addressed. The issue of violence in First Nations communities, described by some as being in epidemic proportions (Manitoba 1991; Hamilton and Longstaffe 1987; LaRocque 1995) has a direct and causal relationship to self-governance. From their professional experience and involvement in the treaty-making process in British Columbia (and in reviewing the literature), the writers acknowledge this glaring omission in the dialogue surrounding self-government. First Nations women in British Columbia have made this link, as witnessed by press coverage of the Aboriginal Women and Treaties Project (Absolon et al. 1996b). The top two recommendations of that study were equal power for women in treaty talks and measures to halt family violence. To address issues of family violence the study suggested that it is imperative to include women in treaty talks (Fournier 1997: A6). The contemporary discourse, however, remains centred on land and resource issues. The prevailing emphasis on these issues, to the exclusion of pressing social issues and concerns, is tantamount to directing women and children to the back of the bus. As judges Hamilton and Sinclair, of the Manitoba Public Inquiry into the Administration of Aboriginal Justice and Aboriginal Peoples (Manitoba 1991: 485), underscored:

> The unwillingness of chiefs and councils to address the plight of women and children suffering from abuse at the hands of husbands and fathers is quite alarming. We are concerned enough about it to state that we believe the failure of Aboriginal government leaders to deal at all with the problem of domestic abuse is unconscionable. We believe that there is a heavy responsibility on Aboriginal leaders to recognize the significance of the problem within their own communities. They must begin to recognize, as well, how much their silence and failure to act actually contribute to the problem.

Pushing women and children's issues to the back of the bus leaves First Nations citizens in a tenuous situation. It is therefore important to ensure that the causal connection is made between self-government discussions and the reality of women's lives, as stated by Nightingale (1995: 33).

> Issues of violence and self-government have tended to be dealt with as separate issues, neither having relevance to the other. Aboriginal women do not support this position, believing that the presence of violence in the lives of Aboriginal people is very relevant to the present negotiations towards self-government as Aboriginal self government must mean ending the vulnerability of Aboriginal females to violence in Aboriginal communities.

Contemporary First Nations Women and Sexual Equality

> The political circumstance for aboriginal women, when viewed through a race and gender analysis, is a tenuous state of affairs, at best. Those women who advocate for an examination of the practices of sexism in aboriginal communities are labelled traitors to the cause. In this dynamic, the issue of race has superseded the issue of sexism. Many aboriginal people believe that if the aboriginal worldview is embraced, women and men will return to an idyllic form of reality where gender hierarchies do not exist. This will not happen if first nations people do not undergo a process of decolonization that strives to remove the shackles of sexist ideologies, a pervasive element of their colonial baggage (Absolon et al. 1996b: 9).

As described above, the struggle for the sexual equality of First Nations women has resulted in a tension between two different ideologies. One consists of "traditional, cultural" women who in general support the status quo of male-run political organizations. The other consists of the contemporary "non-traditional" feminists (and others) who seek to challenge the patriarchal neo-colonial actions of these same political institutions. This dichotomy is premised on a number of false assumptions, including the belief that the contemporary fight for equality rights could negate First Nations women's cultural and traditional practices. In fact, if one looks to the traditional roles of women — roles without the underpinnings of European patriarchy — there is much common ground with those traditional roles and the contemporary argument for equality rights, participation of, and respect for, First Nations women in governance.

Unfortunately, First Nations women that do challenge the status quo — patriarchal First Nations governments — are consistently obstructed in their resistance. Green (1993: 118) described their predicament.

> Those Aboriginal women who have a political analysis of their experience as women in addition to as Aboriginal are intimidated in the process of activism.... Aboriginal feminists take great risks and display real courage in continuing their activism. All feminists who find themselves targets of ridicule, marginalization, and other sanctions including physical assault share this intimidation. However, it is more profound for Aboriginal women because the attackers deny the validity of their analysis as authentically aboriginal. It is a painful thing to be labelled as a dupe of the colonizing society for undertaking to name and change women's experience.

In addition, Herbert (1994: 7) in her graduate studies social work thesis discussed the resistance as coming not only from First Nations men but from women who want only to acknowledge the effects of colonial racism and ignore the prevalence of sexism within their communities. Women's experiences of oppression emphasized by the mainstream feminist movement are depoliticized in First Nations communities by the notion of collectivism.

For contemporary First Nations women to succeed in challenging the baggage of colonization and to succeed in creating a space for a First Nations women's world view, Herbert (1994: 9) argued that it is necessary for both women and men to deconstruct their colonial history, understand how much First Nations have assimilated patriarchy into their lives and reconstruct First Nations cultural beliefs that include liberation for both genders.

Many authors noted the prevalence of sexism in First Nations communities.[10] Fighting sexism is one of the most important and difficult challenges facing First Nations communities. Until First Nations men (and women) are able to follow the lead of such First Nations men as Judge Murray Sinclair (who underscored that women and children suffer tremendously as victims in contemporary society because of sexism, racism and unconscionable levels of domestic violence) (Manitoba 1991: 475), there will not be true liberation for First Nations women, children and communities.

> Liberation from colonialism will be of no assistance to Aboriginal women, if sexism maintains a colonial relationship between Aboriginal men and women...women who object to the exclusion of their interests as women are told that there is no issue; and that the political interests of the First Nations are served by denying women's issues. While male leaders speak for "their people" dissident women's voices are silenced (Green 1993: 119).

Contemporary First Nations Women and Self-Government

> Some Aboriginal women believe that an inherent right to self-government might have the effect of curtailing their individual rights as women (Isaac and Maloughney 1992: 453).

This report, like most of the literature examined, sets the contextual framework for a gendered analysis of self-government within a discussion of the impact of colonization and the contemporary situation of First nations women. In light of this analytical framework, as articulated above, many First Nations women are concerned about self-government as well as current governing structures (pursuant to the *Indian Act*) and the protection of their rights as women (Blaney and Huntley 1999; NWAC 1992b).

This does not mean that First Nations women are opposed to self-government. It means that First Nations women are concerned about self-government discussions that exclude First Nations women's concerns and their participation. As McIvor (1996: 77) stipulated: "Aboriginal women and men share the same desire for self-government although their visions may differ."

Murphy (1996: 42) captured the essence of First Nations women's fears of self-government as currently configured: "...fear these governments will be unaccountable, exclusionary, and based on misunderstandings of or simply outdated and unacceptable aboriginal traditions." However, she goes on to add that Aboriginal women could be enthusiastic supporters of self-government if it is accompanied by a critical and flexible interpretation of tradition in light of contemporary Aboriginal beliefs, values and realities and includes an equal role for

Aboriginal women in defining, negotiating and implementing these traditional values and institutions.

The national organization for First Nations women, the Native Women's Association of Canada (NWAC), has led the debate regarding the impact of self-government on First Nations women and brought the issues and concerns of First Nations women to the foreground. As chronicled by many authors, NWAC advanced a court challenge during the constitutional debates (Charlottetown Accord, 1992) for the full and equal participation of First Nations women in constitutional discussions.[11] Its concern was that the dominant discourse on self-government failed to incorporate the unique lived experiences of First Nations women and to include their participation. The sentiments of many First Nations women were captured by Green (1993: 10).

> The process of exclusion of Aboriginal women by key players in the constitutional sandbox, with the tacit approval of all other players, is characteristically sexist, and indicative of political and policy hegemony of men.

The exclusion of women in such important constitutional discussions was a source of great distress for many First Nations women. Advocates for NWAC felt it was yet another instance of women being asked to set aside their struggle for sexual equality in favour of the collective rights of all (McIvor 1995b). NWAC, therefore, out of concern for First Nations women's rights lobbied for the application of the *Canadian Charter of Rights and Freedoms* to First Nations governments. Borrows (1994: 45) noted:

> These women put greater trust in the *Charter* and common law courts to protect them in their rights than they did in their own people. This demonstrates that some First Nations women were very concerned that their rights to self-government were not being protected by the process and substance of the Charlottetown Accord.

Women were criticized for breaking away from the "collective" and, as mentioned earlier, were perceived as "traitors" based on a false dichotomy between individual and collective rights. Not all First Nations women, however, were traitors and felt the Charter should apply. The former Chief of Musqueam, Wendy John (now Associate Director General, B.C. Region of Indian and Northern Affairs Canada), argued that:

> ...divisions between First Nations people based upon the non-native fascination with extreme individualism simply supports the assimilation of our people into the non-native culture (Isaac and Maloughney 1992: 472).

Isaac and Maloughney, however, correctly countered that equal treatment of men and women does not exemplify "extreme individualism" nor does it support the assimilation of Aboriginal people into non-Aboriginal society. The fact is that, traditionally, First Nations women enjoyed some form of equality and respect; therefore, a traditional notion of equality rights must have existed. In addition, individuals in traditional societies were sanctioned when they caused harm to other members of the "collective." This illustrates the protection of individual rights within the collective. As succinctly stated by Isaac and Maloughney (1992: 473):

> ...the protection of "certain individual" rights, such as the right to equality between men and women does not necessarily promote assimilation but rather may enhance the true nature and history of the relationships between Aboriginal men and women.

McIvor (1995b: 87) added to this argument with the following assertions.

> In the constitutional process leading to the development of the Charlottetown Accord, there was a notion that aboriginal women advocated individual rights to protect gender equality, and that the predominantly male aboriginal leadership advocated collective rights. To me, that is a false dichotomy. It is my position that collective and individual rights coexist in domestic and international law, as do the rights of self-government and self-determination. Self-determination relates to 'self', to the individual, and collectively it may refer to a group of individuals who share fundamental traits like race, language, culture, tradition and values.

Furthermore, policy makers, legislators, negotiators and other decision makers, be they First Nations or state representatives, must remember that:

> ...if group rights are exercised in a manner that does not protect the security of individual Aboriginal persons, such as Aboriginal women, the justification for protecting group rights is questionable (Isaac and Maloughney 1992: 469).

McIvor (1995b) also advanced the notion that pursuant to section 35 of the *Constitution Act, 1982* the Aboriginal rights enshrined in the Constitution include First Nations women's civil and political rights founded on their traditional roles and responsibilities. These rights are shored up by section 35(4)[12] that entrenches sexual equality in the Constitution. Notably, this constitutional provision was not supported by the Assembly of First Nations (Borrows 1994).

In summary, the rights of the collective must not shield women's rights. There must be a paradigm shift to include concerns for the rights of women within the collective instead of casting women's voices aside. The writers of this report, however, contend that this must be done by First Nations for First Nations. For too long, the state has neglected the issues of First Nations women. LaRocque (1997: 96) eloquently summed up the gender debate.

> If Aboriginal self-government or any other community-based organizing model is to be created under the healthiest of circumstances, everyone must be free to examine issues in a context of freedom, honesty, creativity, caring, and gender equality.

3. SELF-GOVERNMENT AND TREATY AGREEMENTS IN CANADA

The authors examined the various modern treaties and self-government agreements listed in the bibliography of this report. Notably, no specific gender equality provisions existed in any of the documents perused. As well, as stated earlier, even the most contemporary literature on self-government fails to incorporate a gendered perspective or options for gender equality.[13] The *B.C. Claims Task Force Report* (B.C. Claims Task Force 1991), seen as the blueprint for treaty negotiations in British Columbia, also fails to provide any sort of gendered perspective.

In addition to reviewing agreements and treaties, the authors reviewed literature pertaining to various agreements, most notably the *Nisga'a Final Agreement*. Senator Pat Carney noted in a Hansard debate (Canada 2000) that the senators were advised that the *Nisga'a Agreement* represented a template for some 50 other agreements. This is a concern to women in British Columbia as the document fails to incorporate a specific gender equality provision. In fact, a Nisga'a citizen, Mercy Thomas (who appeared as a witness before the Senate) was cited by Senator Pat Carney (Canada 2000: 15) as expressing concern for other First Nations women

> ...who are likely to suffer under similar provisions in other treaties. I worry about the fundamental loss of gender equality and other rights provided by the Canadian Charter, the Constitution and common law. It is my opinion that this treaty is a dictatorship-structured treaty. Those who have concerns are left on the outside looking in.

Carney (Canada 2000: 16) also cited another First Nations woman, Wendy Lockhart Lundberg (Squamish), who expressed concern that the *Nisga'a Agreement* asserts collective rights over the rights of individuals and represents a further erosion of Native women's rights.

> It is ironic that self-government initiatives are often referred to as "modern day treaties." I find that these initiatives do not advance native women on the path towards equality but rather they are draconian in their present form, relegating native women to the Dark Ages.

The fact that Senator Carney openly stated what many have implicitly known that the *Nisga'a Agreement* is a template of concern to First Nations women, especially in light of consultations held with First Nations women in British Columbia regarding the B.C. treaty-making process (Absolon et al. 1996b). James (1996: 8) reported on the work of Absolon et al.'s treaty project and stated that:

> ...there was consensus that the process has been blind to the needs of Aboriginal women. None of us felt confident that we knew what our bands are doing at the treaty tables.

Not only did the report identify the fact that male-dominated First Nations governments are excluding women, concern was raised about the state's continued discrimination against

First Nations women. Ironically, the former president of the United Native Nations, Viola Thomas (1996), in correspondence to the B.C. Ministry of Women's Equality highlighted the Ministry's lack of public response to a report it had commissioned.

Another recent example on the inclusion, or the lack of inclusion, of women was witnessed in the Northwest Territories. On May 26, 1997, the inhabitants of Nunavut voted on whether the Nunavut Legislative Assembly should have equal numbers of men and women represented in their legislature. This was soundly rejected by 57 percent of those casting ballots. Only 39 percent of eligible voters went to the polls to vote on this plebiscite. This question and others were posed to determine citizens' opinions on issues of central importance for Nunavut. Those that were opposed to this, were opposed because they felt all Canadians have the same right — men and women. It is a question of the best qualified seizing the opportunity. Supporters of having equal men and women felt the Legislative Assembly should have the same gender parity of men and women as found in the home. The role of men and women is different, but they complement each other and are of equal importance. That is how it should also be in the Legislative Assembly where there are issues women are best able to see to, and therefore imperative that their representation be assured. The day after the gender parity was defeated, the Nunavut newspaper *Nunatsiaq News* (Dahl 1997) highlighted a bitter and frustrated reaction.

> Compared to most of Nunavut's men, Nunavut's women are more literate, more level-headed and more skilled. Self-governing Nunavut will need leaders who know how to read, write, count and compute in both our major languages and leaders who know how to show up for work without a hangover. But take a look at who shows up the next time your regional Inuit association or community council holds a meeting. Then, count the number of men around the table who possess those qualities. Next, count the number of women who possess those qualities. Observe who's doing the typing, the interpreting, the translating, the minute taking, the bookkeeping and the telephone answering. Observe who's doing the work that actually takes brains to do. If you do that, you'll understand what the people of Nunavut really lost on Monday's vote. You'll understand that the gender parity proposal was not created for the benefit of women it was created for the benefit of all.

A very interesting lesson from Nunavut. You cannot guarantee that women will be granted fair representation in government, unless the specific provisions are put in to allow it.

Clearly, the time is ripe for *all* engaged in treaty making to ensure that the voices of First Nations women are included in the debate on self-government and that women are fairly represented in current *Indian Act* governing structures.

4. THE INTERNATIONAL PERSPECTIVE

Dion Stout and Kipling (1998: 23) highlighted the positive alliance developed between non-Aboriginal and Aboriginal women as a result of the 1995 Beijing Women's Conference. Vinding (1998: 11) also noted that a milestone was reached in the history of Indigenous women at the Conference where "110 indigenous women participated, representing almost the same number of organizations from 26 countries." Indigenous women met at the conference and prepared the Beijing Declaration of Indigenous Women that included an assurance for the political participation of Indigenous women in governance.

> #44. We demand equal political participation in the indigenous and modern socio-political structures and systems at all levels (As cited in Vinding 1998: 325).

Unfortunately, to date, there is not a great deal of international literature regarding Indigenous women's perspectives on self-government. However, a 1998 international document edited by Vinding (1998) chronicled some international efforts of Indigenous women. There are many similarities between Indigenous women's struggles in other parts of the world and in Canada. Vinding (1998: 14) affirmed that other Indigenous women's groups also want self-determination but (as in Canada) they want it on terms that respect Indigenous women's rights. Moona Sinclair, a Maori woman, described a similar colonial history as Canada's that resulted in the imposition of White patriarchy. She stated that, as in Canada, Maori men internalized the devaluation of Maori women who are now marginalized. Again, like many women in Canada, Sinclair advocated for the decolonization of Maori men's attitudes toward women (Vinding 1998).

Much can be learned from south of the border — from the experiences of American Indian women in the United States with the application of the *Indian Civil Rights Act* (federal legislation in the United States that protects the civil rights of American Indian tribes). As outlined by Christofferson (1991), the application of that legislation has further discriminated against American Indian women at the expense of tribal sovereignty, leaving Indian women to fend for themselves. This, she argued, is a result of the United States government stepping back from the "discriminatory culture that they helped to create" and has resulted in Native American women suffering economically and psychologically because of gender discrimination within their own tribes (Christofferson 1991: 185). An Aboriginal charter/constitution could ensure that the rights of First Nations women in Canada are not further eroded, as has happened in the United States.

With regards to the protection of Indigenous women's rights, in the international arena, Green (1993: 115) noted that First Nations peoples have made appeals to various international bodies, pursuant to legal instruments that embody the principles and guarantees of the *Canadian Charter of Rights and Freedoms*; therefore, presumably First Nations governments would not be exempt nor should they want to be exempt from these rights and guarantees. The authors, however, contend that First Nations must incorporate this into their own charters/constitutions rather than relying on protection by the state, which has historically failed First Nations women.

5. CRITERIA FOR GOOD GOVERNMENT: FIRST NATIONS WOMEN'S PERSPECTIVE

> ...the status quo is unacceptable, and must be challenged through the pursuit of policies and research which actively acknowledge the wrongs committed against Aboriginal women in the past, and which actively strive to improve these women's positions in the future (Dion Stout and Kipling 1998: 21).

The authors of this report provide some preliminary recommendations and options for good governance from a gendered perspective. Some of these options were derived from the literature on First Nations women and self-government while others were garnered from their experiences engaging in the B.C. treaty-making process, as legal counsel, leader and negotiator. The focus on gender concerns leads to a cry for women's issues to be considered seriously as a pressing human rights issue.

As stipulated in the preceding sections of this report, the options considered by governments (First Nations, federal and provincial) for self-government and *Indian Act* governance must heed a contextual framework and analysis that captures First Nations women's issues and concerns. Dion Stout and Kipling's challenge (above) for policy that acknowledges Aboriginal women's experiences is endorsed by the authors. Good governance, as stipulated by the Institute on Governance (1999b: 21) is effected through strong:

> ...legal and policy-making mechanisms. Current research goes so far as to suggest that the overall success of development depends, in large part, upon the government's legal and policy regimes.

Policy making must derive from a place that acknowledges the impact of colonization and embraces decolonization. Jackson (1994: 194) described policy making as being concerned with:

> ...competing values and the achievement of social purposes. Social policies seek to effect compromises between social values that are in tension (for example, individual rights versus collective rights). In the widest sense, social policy seeks to address the balance between fairness to the individual and the well being of society as a whole.... In the self-government debates we must ask: where is the balance to be struck? ....the debate needs to transcend self-government pragmatics to focus upon wider human rights issues if Aboriginal women are to have a stronger base from which to address their concerns.

The concerns of First Nations women are primarily around issues of equal participation, human rights, violence and gender equality. Of particular concern is the lack of accountability in current governing structures, and concern that existing structures and those proposed in self-government agreements and treaties will not advance or protect women's equality rights. Chiste (1994: 31-32) summarized the crux of the problem.

> The political problem is to ensure accountability of the current political leadership, trapped as it is in processes and structures of governance foreign to many Canadian aboriginal cultures. The liberal individualistic ideals and underlying norms of behaviour that are a feature of representative government find little resonance in the aboriginal communities on which they have been imposed...the resulting political culture is marked by frustration, dissatisfaction, and a lack of leadership accountability. The aberrations that have resulted have resulted from the absence of effective mechanisms to ensure leadership accountability.

According to the Institute on Governance (1999b: 6): "Fundamentally...governance is about power, relationships and accountability: who has influence, who decides, and how decision-makers are held accountable." Options are provided in this report that advocate accountable structures, thereby ensuring women's rights are protected by First Nations governments.

The IOG (1999b: 11) also recommended that communities engage in a process of crafting a vision for development purposes that draws from the community's social, cultural and historical profile.

> Understanding where a community has been will improve the chances of directing where it will go.

The authors of this report endorse this approach and its applicability to treaty making and self-government agreements. Visions for First Nations self-government must include the contemporary lived realities of First Nations women and children because in order to address "problems" they must be named (such as the epidemic of violence in communities) (Manitoba 1991; Hamilton and Longstaffe 1987; LaRocque 1995). The authors also endorse the United Nations identification of criteria for good governance (some of these criteria are discussed in the following sections) because of its inclusion of gender equality principles:

- participation: all men and *women* should have a voice in decision making;
- rule of law;
- transparency;
- responsiveness;
- consensus orientation;
- equity: all men and *women* have opportunities to improve or maintain their well-being;
- effectiveness and efficiency;
- accountability; and
- strategic vision: leaders and the public have a broad and long-term perspective on good governance and human development, along with a sense of what is needed for such development. There is also an understanding of the historical, cultural, and social complexities in which that perspective is grounded.[14]

These attributes are added to by the Royal Commission on Aboriginal Peoples,[15] which underscored the importance of the role of women in governance:

- the centrality of the land;
- individual autonomy and responsibility;
- the rule of law;
- the role of women (In many Aboriginal societies, women's roles were significantly different from those of men in governance. According to the Commission, women must play a central role in the development of self-governing entities.);
- the role of elders;
- the role of the family and the clan;
- leadership and accountability; and
- consensus in decision making.

First Nations structures of governance need to reflect our culture and values. Traditionally, many women had a highly valued role and, in some cases, were advisors to the men. Women were teachers. Women were the givers of life. Women must be included in leadership positions, elder advisory roles and play a central role in the development of self-governing entities. Women must have a voice in decision making. Women must be treated equally in such areas as employment, payment of wages, opportunities, educational opportunities and capacity building. Only when women are restored to their place of importance within First Nation governments will self-government be fully achieved.

Healthy Communities a Prerequisite for Self-Government: A Leader's Perspective

Enough cannot be said about the need for healthy communities led by healthy leaders. For any community to move ahead, healing needs to take place, with individuals, family and the community. All are integrally linked with one another. Years of colonization, residential schools, demoralization by the *Indian Act*, stripping away traditional governments, languages and ceremonies through the banning of the potlatch — all have severely impaired the First Nations' ability to govern. For many years, communities have been trying to resolve these issues and move on, but in many communities, there is still a lot of healing to be done. Dysfunction, anger and a feeling of helplessness or lack of control impair any government that is trying to function and achieve things for the community. Community members often focus on the negatives; positives are ignored or overlooked and not celebrated in the way they should. Due to all of the above, an atmosphere of lateral violence exists at community, tribal council and other levels. Lateral violence can be described as people, who have been colonized, continuing to colonize themselves using methods that do not promote progress, but rather bring others down. This includes intimidation, anger, control, put downs, threats, name-calling and embarrassment.

As a leader who has experienced the lateral violence that exists within today's governing structures, it needs to be eliminated in order to have healthy functioning governments. There must be zero tolerance for violence in any form and certainly at the government level. Much of this lateral violence comes from the need to control, the need to be right, the need to feel above other people. For most people who are part of this process, they do not see anything wrong with this way of doing business because it is the way it has always been done. They know no different. Quick decision making without giving an issue due thought is also a part of this process. When someone questions the decision and tries to think it through logically, the person is attacked because he or she is not falling into line. This kind of governance has devastating effects on people and communities. It is no wonder people fear self-government when they see this kind of leadership. What sort of role modelling is this for the next generation, when this is the way business is conducted? (Author comment: Having suffered under this type of government for over seven years, and taking a year to heal myself once away from this continual lateral violence, has illustrated clearly to me the graphic need to have healthy leadership at the tables.) Only with healthy leadership will communities be able to prosper under proper decision making and in an atmosphere where people are able to contribute ideas and suggestions without fear of reprisal.

Building government structures that are healthy, stable and not subject to abrupt and frequent changes, where the rules of the game do not change, is the route to progress. Ensuring women's participation in building those governments and being a part of those governments, is essential. The key to successful governance will be the health of the community, its leaders and people with a vision for independence.

What Is Government?

To address the issue of the role of women in government, government must first be understood. Government is a system of agreements, an understanding within a group of people that includes specific roles and responsibilities for the individual, and the family, and for community leadership. The individual has always been taught his or her place in the family, the community and the nation. The best government is an integrated system where power is reciprocal between the people and the leadership (Nuu-chah-nulth 1999).

First Nations are looking for recognition of the inherent right of self-government — not to be given, granted or delegated the right from a government that is very junior in comparison to governments that have been in place since time immemorial.

Over the years, the colonial government has pursued an aggressive stance of taking over First Nations land, governing structures and resources. In the process, it has tried to destroy the very fibre of First Nations culture, including the role of women in government.

The concept of self-determination can be looked at as a continuum. On one end is assimilation where there would be full integration into Canada. In the middle area would be autonomy or self-government within the territorial integrity of the state. At the far end would be full national independence or secession.

With assimilation, First Nations would become part of the greater society. This was the aim of the White Paper on Indian Policy of the Trudeau Government (Canada 1969). It was also the objective of the original *Indian Act*. Fortunately, neither the *Indian Act* nor the White Paper were able to assimilate First Nations, and First Nations remain strong as entities.

Self-government within the integrity of the state can be illustrated by the *Indian Act*. Antiquated and outdated as it is, it is a form of self-government that is better than assimilation. The *Indian Act* does allow for some very limited powers to First Nations.

The *Sechelt Self Government Act* is further down the continuum because there are greater powers for the First Nation than in the *Indian Act*. The hope is that further treaties negotiated with governments will allow for broader and greater powers than in the Sechelt and the Indian acts. Self-government is a term used by the Canadian government. It implies that people govern themselves. Unfortunately, the federal and provincial governments limit what self-government looks like and want to retain powers they feel are necessary to continue to control First Nations. How far First Nations can move down the continuum will depend on successful negotiations with governments.

Self-determination is an international law term that allows peoples to pursue their political status and their economic, social and cultural development freely. Self-determination is a step-by-step process. A First Nation pursues its development when it is ready, as it is ready and with its consent. A First Nation would pursue self-determination by moving down the continuum and finding the point where it feels comfortable. The far end of the continuum is secession, where a First Nation would actually leave Canada. This is unlikely, but it has often been said that when a people decides to secede, there is nothing that will stop them. This paper illustrates some existing self-government models or structures that could be available to First Nations in Canada.

Models of Governance

After an extensive review of existing treaties, self-government agreements and other models, no models were found that had provisions for women. Different models are examined in this paper to give people an idea of what exists, what can exist and what could be incorporated into their own forms of government. After this review, a model is suggested which combines many of these models, with specific provisions for women.

The Harvard Model

The Harvard Project (Cornell and Kalt 1998) is one model used by some First Nations in structuring stable governments. The key concept is the focus on economic development in the nation-building structure. In this approach, sovereignty, nation building and economic development go hand in hand. Without sovereignty and nation building, economic development is likely to remain a frustratingly elusive dream.

The nation building approach recognizes that development is a political issue requiring a proactive as opposed to a reactive stance. This means looking to the long term. It also means creating an environment in which business can last. Success in nation building will be measured by social, cultural, political and economic gains, which, the authors argue, should also include the active and full participation of women. Development is the job of everyone in the community, not just leadership. Sound institutions must be developed that have strategic and informed actions. There must also be fair and effective dispute resolution processes that are independent and non-politicized, and a separation of politics from business management. Integral to all this is a competent bureaucracy with effective staffing systems, a personnel grievance system and regularized practices. Most important, the structure of government chosen must be a cultural match for the structure of the governing institutions and the prevailing ideas in the communities about how authority should be organized and exercised.

When First Nations institutions lack stability, it is normally because the rules were unclear to begin with, the rules were set on an impromptu basis, people change the rules to suit their own interests or the rules are simply ignored. To deal with these issues, the First Nation must have clear rules, planning, accountability and enforcement, because when stability disappears, investment goes with it.

With this model of governance, the building blocks for sustainable and successful development can be summarized as:

- sovereignty: First Nations make decision and accept responsibility for the consequences;
- effective institutions;
- strategic direction; and
- decisions/actions.

This model could be useful by ensuring that women have equal or greater rights of participation or economic development, wage parity with men, equal opportunity, participation in establishing the models including the dispute resolution processes, structure and sound institutions with policies and laws that do not change with leadership.

Sechelt Model

The Sechelt First Nation self-government structure is found in the *Sechelt Indian Band Self Government Act* passed by Parliament in 1986. In the recent Sechelt Agreement-in-Principle, the Sechelt maintain the same form of self-government as in the Act; they do not want to change anything because they like what it has done for them. A final agreement has yet to be concluded.

Under the Sechelt Act, the legislation provides that:

- The First Nation was set up as a legal entity.

- The Sechelt have their own constitution for the purposes of establishing the terms of office of a governing council accountable to the electorate, a system of financial accountability, a membership code for the band, specific legislative powers of the council and a process to amend the constitution.

- The elected council is given the power to pass laws on a wide range of matters. This includes access to, and residence on, Sechelt lands, zoning and land use planning, expropriation for community purposes, the use, construction, maintenance, repair and demolition of buildings, local taxation of reserve lands, occupants and tenants, administration and management of lands belonging to the band, education, social welfare and health services, and professions and trades.

- The Sechelt have the management of Sechelt lands.

Although there is little existing analysis of the effect of the Act on Sechelt women, Teresa Jeffries, a Sechelt member, is cited as stating that "the role and responsibility of women as keepers of the culture remains in place" (Isaac and Maloughney 1992: 473). This model could be easily adapted with an amended constitution that allows for the guaranteed role of women in the government, institutions and law making.

The Nunavut Agreement

Nunavut has a public rather than an Inuit-exclusive government structure, with powers analogous to those of the NWT government. The Nunavut governance model is not protected as an Aboriginal right pursuant to section 35 of the *Constitution Act.* As such, it can be changed at any time by an act of the Nunavut government. The Nunavut legislature does not have equal representation of women. Time will tell how effective this new government is regarding gender equality issues and women's concerns. As time goes on, Nunavut may want to revisit the issue of women in government.

The Lummi Tribe Model

The Lummi Tribe (Ryser 1995b) of Washington State in the United States set out process goals.

- Formalize relations between the United States and Indian Tribes on a government to government basis.
- Allow Indian Tribes to determine internal priorities, redesign programs and reallocate financial resources to more effectively and efficiently meet the needs of their Tribal communities.
- Promote greater social, economic and political self-sufficiency among Indian Tribes.
- Establish better accountability through expanded tribal Council Decision making authority.
- Institute administrative cost-efficiencies between tribal Governments and the United States through reduced paper work burdens and streamlined decision-making process.
- Change the role of the Federal agencies serving Indian Tribes by shifting their responsibilities from day-to-day management of Tribal affairs to that of protectors and advocates of tribal interests.

These are the principles on which they established their self-government. These process goals could reflect the role of women, by making women in government an internal priority. And, to promote greater social, economic and political self-sufficiency, have specific goals to ensure women play a meaningful role in government.

Royal Commission on Aboriginal Peoples Models

During the Royal Commission on Aboriginal Peoples, various authors familiar with self-governance developed three models. These models have not been implemented by the federal government, and whether First Nations have used any of them is not yet known.

Nation model

The First Nation would have an identifiable land base consisting of its own lands and resources with the exclusive right to oversee the use of those lands and resources. Where traditional territories are shared with non-Aboriginal governments, co-operative agreements with the Crown would have to be reached regarding rights and interests. Government authority would include law-making legislation, administration and policy making, and interpretation, application and enforcement of law. The units of government may be organized on either a centralized or federal basis. Jurisdiction may reside with different levels of government in this model. The First Nation would develop a constitution that reflects values, beliefs and principles, describes government structures, outlines government procedures and addresses conditions for citizenship.

Public government model

The jurisdiction of public government would extend over a geographically defined territory and would serve all residents within the territory. The Aboriginal majority retains its constitutionally protected rights. The public government would have to be sufficiently empowered to support the aspirations of Aboriginal people in economic, social, cultural and political realms. Aboriginal-controlled local public government would be allowed to exercise greater authority than comparable municipal governments. Regulating the use of resources, education, social affairs and administration of justice normally falls under provincial jurisdiction.

Community of interest model

This model is not land based or territorial, with respect to location of its membership or its jurisdiction, although a land base may be acquired for cultural, spiritual or educational purposes, or for economic development. Membership is based on Aboriginal identity and is completely voluntary. This would focus primarily on the delivery of services and programs, such as social services, child welfare, housing, economic development and education, culture and language. These arrangements would primarily outline co-operation by governments in specified areas of service delivery.

These models could have specific provisions for women reflected in the values, beliefs, aspirations and principles of the government. Economic, social, cultural and political realms could all have provisions that would ensure women have a significant role in their structures of government.

Home Rule in Greenland

In 1979, Greenland started its home rule or national self-government when the Danish government transferred political authority and responsibility to the Indigenous Greenlanders (Danes and Inuit). The Greenlandic Parliament has legislative and executive powers affecting the economy, taxation, education, and cultural and political affairs. It has jurisdiction over the fishing industry, retail trade, construction and housing, transportation and telecommunications. It has veto power over non-renewable resources. Denmark retained jurisdiction over foreign relations and monetary policy. In areas where home rule does not have jurisdiction, the Home Rule Authority plays an important role as advisor to the central authority. The *Home Rule Act* is not constitutionally protected but is considered to have the character of a constitutional agreement and is respected as such. The Danish and Greenlandic parliaments signed an agreement that stipulated that all revenues from mineral resources, oil and gas would be shared equally between them.

In this model, the political authority and responsibility for women could be clearly outlined in the legislative and executive powers of the government. As this model gives the government more power than most of the models outlined here, this could be beneficial if applied in a Canadian context.

The Saami Parliament

In Norway, the Saami Parliament was established to recognize the Saami as a people. The Saami Parliament deals with all matters affecting the lives of the Saami. It is an advisory body and may not make any decisions binding on Norwegian citizens unless specifically authorized in the Act or any other enabling statutory provision. The Norwegian state authorities refrain from making decisions concerning Saami matters without having consulted the Saami advisory body.

There are no guaranteed seats for women in the Saami Parliament. For women to be included fully in the advisory process, a certain percentage of representatives should be women.

Summary of the Models

These models have been provided as a guide to what can be developed in self-government, with a reminder that none of these existing models has specific provisions for women. The next section looks at a framework or constitution for First Nations governments with specific provisions for women and other provisions which would result in these same governments treating women fairly.

Framework or Constitution for First Nations Governance

What is a constitution? A constitution provides a framework for governance. It is a set of written and unwritten rules and principles that govern decision making in a political community (IOG 2001). Constitution is not a First Nations word. First Nations all had governments and were structured on various principles and values. This could be termed a constitution. Any act should use a First Nations term that would basically mean the same thing. A framework is needed that assures that women have a role in government, have avenues to air their grievances and are ensured of fair decision making in the community.

There are some things that do not need to mention women and will still assist women. Provisions in the *Indian Act,* self-government agreements and treaties need to assure the following for good governance:

- First Nations human rights panel(s);
- a First Nations ombudsperson;
- gender analysis in negotiations;
- a First Nations gender lens;
- the participation of First Nations women in governance;
- dispute resolution mechanisms;
- transparency;
- conflict-of-interest laws;
- rules of natural justice;
- rights of members clearly defined;
- mechanisms for removal of leaders;
- attention to particular issues that concern women; and
- governance legislation.

First Nations Human Rights Panel(s)

A recommendation was made by W. Moss (1990), a legal writer, for a national human rights panel made up jointly of Assembly of First Nations/Native Council of Canada/Native Women's Association of Canada appointees and established pursuant to federal legislation. Although this is a laudable goal, First Nations legal scholar Sharon McIvor (1995b), in her master's in law thesis, noted that such a suggestion is likely to meet with substantial resistance from Aboriginal communities that want the centre of power and jurisdiction to remain at the local level. This is a useful observation. Perhaps First Nations human rights panels could be established at the provincial level. This needs to be further examined.

First Nations Ombudsperson

The recommendation for a national First Nations ombudsperson was articulated by C. Howard (2000), a journalist, who interviewed First Nations women from across Canada. They provided her with examples of the corruption and mismanagement they had experienced in their communities. One First Nations woman from Manitoba suggested an ombudsperson, who could serve as an independent watchdog, to audit and investigate allegations of mismanagement on Canada's 600-plus reserves. The authors believe this is an important recommendation that should be further explored by Indian and Northern Affairs Canada and First Nations.

Gender Analysis in Negotiations

> As we negotiate self-government agreements we must recognize that, in some communities, Aboriginal women are not sufficiently represented in the consultation and negotiation processes. It is in the interest of all parties to be responsive to the views of women and men throughout the process. This will contribute to a final agreement that is stable and embodies the principles of good governance. This concern is not merely theoretical…. Good governance within a stable political regime is a key goal in all self-government negotiations. Agreements which reflect a gender equality bias, or, that are achieved through a process which demonstrates such bias, are at risk of litigation and chronic instability, whereas agreements that foster equality are more apt to be stable and enjoy a higher degree of legitimacy. It is incumbent on all participants to self-government negotiations to be cognizant of gender-equality analysis principles (INAC 1999: 3-1).

Indian and Northern Affairs Canada has developed the *Guide to Gender Equality Analysis* (1999), which the authors believe should be adhered to by the federal government and serve as a template for all other parties, including First Nations and provincial government representatives to draft similar policies. The rationale for the policy is described as follows.

> It is an analytical tool that assesses the differential impact of proposed and existing policies, programs and legislation on women and men by considering the different life situations (different socio-economic realities) of women and men (INAC 1999: ii).

Unfortunately, the guide fails to provide much in the way of a contextual analysis or framework from which to understand the different life circumstances of First Nations women. It is important that those applying the principles set forth in the Guide have a critical awareness of the lived experiences of First Nations women. The *First Nations Gender Lens,* prepared by Absolon et al. (1996a) for the B.C. Ministry of Women's Equality could be used as a template to assist legislators, policy makers, negotiators and others with a contextualized gendered analysis and should be available from the B.C. government.

First Nations Gender Lens

The authors advocate the use of a First Nations gender lens by First Nations, provincial and federal policy makers, legislators, negotiators and others. The lens prepared by Absolon et al. (1996a) could serve as a template as it provides a basic set of contextual information and questions for acknowledging and responding to the politically and socially constructed inequalities that confront Aboriginal women. The lens consists of two parts, the analytical lens and the factors lens. The factors lens asks policy makers (and others) to explore seven influential factors where First Nations gender has specific implications:

- legal issues;
- life experiences;
- systemic discrimination;

- economic equality;
- violence against women;
- health and social issues; and
- other.

Participation of First Nations Women in Governance

> Capacity development also means ensuring that Aboriginal women are involved in consultation and decision-making surrounding self-government initiatives. The federal government recognizes that Aboriginal women have traditionally played a significant role in the history of Aboriginal people and will strengthen their participation in self-government processes. This is particularly relevant for women at the community level. Consistent with the approach recommended by the Royal Commission, the federal government will consider additional funding for this purpose (INAC 1997: 16).

It has been made abundantly clear that in order to address effectively the issues and concerns of First Nations women, women need to be engaged in decision-making processes and negotiations of self-government agreements and treaties. First Nations leaders, as well as their federal and provincial counterparts, need to ensure the participation of women. The Royal Commission on Aboriginal Peoples (1996a: 80) recommended that:

> 3.2.7 Aboriginal governments adopt the principle of including women, youth, elders and persons with disabilities in governing councils and decision-making bodies, the modes of representation and participation of these persons being whatever they find most agreeable.

The *Indian Act* should therefore address the representation of women on councils. Women need a guaranteed representation on the council of the First Nations. There are many ways of doing this. It could be representation by the percentage of women electorate or an equal number of men and women on council.

As well, women should enjoy equal participation on boards and councils, such as advisory councils, education boards and health boards.

Accountability

> Accountability is central to democratic governments whether in an Aboriginal or non-Aboriginal context (Graham 1999: 1).

The Institute on Governance (Graham: 1999: 5) provides a framework for building sound accountability arrangements with governments.

- Be clear on what accountability is trying to accomplish.
- Manage the relationship and be aware of the interconnection.
- Take some of the "negativeness" out of accountability.

- Take some of the hierarchy out of accountability.
- Ensure that Aboriginal governments are fiscally prudent.
- Develop effective dispute resolution mechanisms and prevention techniques.

The authors urge negotiators (First Nations, provincial and federal) to develop government frameworks that are accountable to First Nations citizens.

Dispute Resolution Mechanisms

No attempts are made to prescribe a blanket dispute resolution process. However, the key elements that are necessary when developing a dispute resolution process are described. The *Indian Act*, or other imposed governance, is a set of rules and regulations that has not incorporated the voices of those it affects, nor does it attempt to deal with dispute resolution. These imposed policies have had major impacts on how First Nations have governed themselves in recent years. As a result, many stakeholders, namely women, have been left with little or no voice in how they are governed.

The understanding of culture in the development of a dispute resolution process is key to successful outcomes. Any examination of First Nation issues in Canada has to respect the cultural diversity that exists within First Nations. In British Columbia alone, there are over 197 individual nations, many of which have different world views, practices and traditions. It would be ethnocentric to develop a single dispute resolution process to meet the needs of all the First Nations people in Canada. First Nations people have for over a century fought the *Indian Act* based on the fact that it did not recognize the individuality of individual nations and the needs of their people, namely women.

Historically, First Nations had effective dispute resolution practices. However, many were suppressed by the imposition of the *Indian Act*. Examples can be found by interviewing elders from different nations. In dispute resolution, if a person went against or did something that was an embarrassment to the First Nation, for example, the elders would gently counsel the individual. They would not use harsh tones but gentle voices to explain examples of appropriate behaviour. This way, the behaviour was not repeated and caused no further conflicts or disputes.

Dispute resolution processes take on many shapes and forms. There is no right or wrong in the development of a dispute resolution process. The importance is gauged on the effectiveness of the process and how stakeholders feel about the process. The most common forms of dispute resolution are mediation, negotiation and facilitation. All have different approaches and require involvement by the stakeholders. Details of these processes are not given here; rather, the framework for a dispute resolution chapter is outlined. The fact that the *Indian Act* is silent on dispute resolution and most communities do not possess dispute resolution mechanisms means decisions are being made without any sort of recourse and involvement. This can cause negative feelings and backlash in the community. Dispute resolution should be available in every community where a person's rights or interests are being affected, to interpret a First Nations constitution, settle conflicts between politicians, or between the governing authority and its citizens. As mentioned in the discussion of the Harvard model, investors look for independent dispute resolution processes to ensure that if there are licensing or taxing issues, for example, a fair and independent body can review a decision of the chief and council.

The authors recommend that dispute resolution be incorporated broadly within the *Indian Act* (so individual First Nations can determine what processes would be most culturally appropriate according to their traditions). A framework for dispute resolution should:

- define clearly what is a dispute;
- set out meaningful objectives;
- define the process clearly (steps, use of elders, etc.);
- be available to all community members and define who can access the process;
- make use of traditional law/protocols;
- ensure a mandatory role for women in the design and delivery of dispute resolution processes; and
- devise systems that are preventive, easy to use and understand, and low cost.

Examples of dispute resolution processes can be found in final agreements including the *Nisga'a Final Agreement*. The existing mechanisms in many agreements, as well as one drafted by one of the authors based on Nuu-chah-nulth tradition, for the Nuu-chah-nulth treaty (which was later replaced by the Nisga'a dispute resolution chapter when the Nuu-chah-nulth decided to adopt most of the *Nisga'a Final Agreement*) were reviewed, and the common elements outlined above.

Transparency

> Transparency assumes the free flow of information. The institutions, processes and decision-making functions of the state are accessible to those whom are affected by them (IOG 1999b: 26).

First Nations governments must, perhaps with the aid of the federal government, ensure that their institutions of governance are transparent, thereby increasing citizen confidence in their systems of government. Members should be entitled to information, such as yearly audits, budgets and interim financial statements on a regular basis. As the funds collectively belong to the members, such information is vital to them. The information members have access to should be clearly laid out.

Conflict-of-Interest Laws

One of the bigger challenges facing First Nations communities is that of conflict of interest. Most First Nations communities are small and people are closely related. Therefore, conflict-of-interest laws must be in place to determine what constitutes a conflict and how to handle it. Conflict-of-interest laws are necessary so there is confidence in the First Nations government. Impartiality and integrity are the underlying principles for avoiding conflict of interest.

Decisions of First Nations governments must be seen to be free of personal biases and consideration. Individuals in positions of public trust should not act in their public capacity on matters in which they have a personal economic interest. Even an appearance of a conflict affects the First Nation's members confidence in councils generally. Political openness and transparency are catch words used regularly and must be addressed through conflict-of-interest laws.

In one court case,[16] the B.C. Supreme Court commented that "in a small community, because of interwoven family relationships, it would be impossible for band councils to operate if courts applied strict rules regarding conflicts of interests. It would be impossible for a First Nation or its council to operate if councillors had to withdraw from all matters involving relatives." Therefore, each community must define a family. In a smaller community for example, it could be spouse and child, or spouse, child, parents, brothers and sisters.

Recommended Format for Placement in the *Indian Act*

Conflict-of-interest laws shall be put in place to ensure that:

- Chiefs and councillors, and their close family members (as defined by the community) do not benefit personally from their decisions.
- Chiefs and councillors do not use their offices for personal gain.
- Chiefs and councillors shall not use confidential information to further their own or their close family's private interests.
- Chiefs and councillors shall declare a conflict of interest and excuse themselves from the discussion and decision making when a conflict exists.

Rules of Natural Justice

Fair play is sometimes missing in decisions made in First Nations communities, not deliberately, but because people are not aware they are entitled to certain procedures of fairness when their own particular legal rights and interests are affected by a decision of the council of a First Nation. To ensure that fair play is a vital part of every First Nation, provisions need to be inserted in the *Indian Act* and in a First Nation constitution, self-government agreement or treaty to ensure that every council is aware of its duties and that community members know their rights. The *Indian Act* is silent on these procedures. Placing these procedures in the Act would ensure that members are able to access them. Another suggestion would be to incorporate what has been decided by case law into the Act.

Many court cases[17] have determined that the *Federal Court Act* has specific provisions that apply to councils of First Nations. Section 18 of the *Federal Court Act*[18] states that if a body has been granted legislative powers under a federal law it is a federal tribunal that hears the case. This means that the federal court can review the decisions made by councils in specific cases and that there are specific remedies the court can issue. Most First Nations do not know they are subject to the rules of natural justice and could have their decisions reviewed by the court. Neither do members know that if they feel a decision has been made unfairly, they may go to court and challenge the decision. Since the case law has been established, it is in the interests of councils and their members, particularly women, to have these criteria placed in the *Indian Act.* This would ensure individual rights from the beginning instead of having to go through the great expense of hiring lawyers to have the council's decision reviewed. It should be noted that these rules apply even if the council has been elected or appointed by custom of the First Nation.[19] The rules of natural justice also apply to any appeal tribunals that may have been established pursuant to section 83 of the *Indian Act.*[20]

The rules of natural justice, as they are called, are part of the larger body of administrative law that is complex and involved. Administrative law as it applies to First Nations is slowly evolving. This section attempts to explain some of the basic principles of administrative law that will help First Nations members particularly women, elders and youth.

When a person's particular rights are affected, certain procedures must take place before the council makes a decision. It must be made very clear that this does not apply to general, political decisions, only to particular rights. Examples of these rights or interests could be in a marital break-up when the male spouse is granted the home, while the woman and children must move off the reserve. Or, decisions are made that indicate a bias, for example, a woman is denied a home. This is especially true if the woman has been reinstated back into the community. It could also apply when an Aboriginal or treaty right is suspended due to an alleged breach of a validly accepted community law or a refusal by the council to issue a licence or permit under its law. Other examples could be where land is taken from an individual due to a rezoning without proper notice, a hearing or fair compensation, a business licence is issued or revoked, or a non-member spouse is asked to leave the community. Women are particularly vulnerable to decision making of this kind, because there are fewer women in leadership positions in the community and they do not have the necessary voice. Many times, a home is in the name of the man, and the woman and children do not have the luxury of remaining in the home due to a decision or policy of the First Nation that the person whose name the home is in remains in the home.

Often times, chiefs and councils are not aware of their responsibilities and certainly most members do not know they have this avenue for redress. Community members and leaders must be educated about their respective rights and responsibilities. This education process could take place by inserting in the framework for First Nations government all the appropriate procedures.

There must be recognition that any time a person's legal rights and interests are adversely affected by a decision of council, proper notice of any meetings of council concerning these rights or interests must be given. Additionally, a person must receive any information the council is relying on in order to make a decision. A fair hearing conducted by the council must then take place[21] with an opportunity by the affected person to make representations. Currently, many councils do not do this, and their decisions could be challenged in court leading to large legal bills for both the First Nation and the individual.

To have fair hearing, bias should not be present.[22] The courts have recognized that the mere existence of familial ties does not lead to the conclusion that the council's decision was biased. Especially in smaller communities with interwoven family relationships, it would be impossible for councils to operate if courts applied strict rules regarding conflicts of interest and bias. It would be impossible for a First Nation or its council to operate if councillors had to withdraw from all matters involving relatives. Real close family ties can be an indication of bias, as well as councillors benefiting from the decision. Also, council members going to any hearing or meeting with a predetermined decision and not listening to what was being said could be an indication of bias. Hasty action carrying out the decision of council without proper care has also been held to be an indication of bias. Councils need to ensure that their hearings are held without bias or reasonable apprehension of bias.

What is most important out of the rules of natural justice is that people are respected by being given notice and an opportunity to speak to the decision makers. This empowers the people with their rights and the knowledge that they have had the opportunity to be heard.

Policy Directive Regarding the Rights of First Nations Members

All First Nations members, or any person whose particular rights or interests are affected by a decision of a council of a First Nation, are entitled to certain procedural methods. This applies in two instances:

- in exercising powers under the *Indian Act* (e.g., passing and enforcing by-laws under section 81 of the *Indian Act*, or removing someone from the reserve under the trespass section of the *Indian Act*, section 31; and
- any time a council makes an administrative decision (i.e., a decision where there is no legislative authority).

When a person's particular legal rights or interests are affected and a decision will adversely affect the individual, reasonable notice of every meeting dealing with the issue must be given. The person must have disclosures of the nature of the complaints or case and the opportunity to respond. This means individuals actually receive documents that concern them. Failure to provide these procedures means there is an absence of a fair hearing, which renders a decision of council invalid. Only a court can determine this, so to ensure these procedural methods are followed, such procedures must be placed in the *Indian Act* or the regulations.

When a hearing is held, ensure that decision makers are not benefiting in any way, or that a very close familial tie does not exist.[23] Also, decision makers should be attending hearings with their minds open and be willing to listen to all presentations. Only then will all First Nations members be treated fairly and feel they have been treated fairly. An appeal tribunal cannot decide on questions of law and jurisdiction raised in an appeal. It can only deal with a breach of regulations.[24]

Recommended Legislative Framework

When a council of a First Nation, or an appeal tribunal constituted under section 83 of the *Indian Act*, makes a decision that affects the particular rights or interests of a member of the First Nation or other individual, the following steps must be taken.

- Where a meeting is to occur that concerns the rights or interests of an individual that may be adversely affected, reasonable notice of a minimum of 10 working days of any meetings will be given to any person whose particular rights or interests will be affected by the decision of the council of the First Nation.

- Before the meeting, the individual whose rights or interests will be affected will receive any documentation affecting her or his rights.

- Affected persons may in writing, or by attendance at the meeting, have the opportunity to respond to any documentation or issue that has been raised concerning them.

- The council of the First Nation shall ensure that all persons making decisions are without bias. Councils of the First Nation shall have guidelines as to what constitutes bias based on close familial ties and persons benefiting from the decision with procedures which ensure no decisions are made prior to the affected individual responding to any issue raised concerning that individual.

Rights of Members Clearly Defined

Many communities hold community meetings that give direction to the chief and council. Motions are passed and abided by in communities. Under the *Indian Act*, the members have no authority except in referendums approving membership codes. The only authority in the community lies with the majority of the chief and council. How would a motion adopted by the membership hold up in court? When community votes are binding on the council must be clearly defined.

The chief and council have been said to have to be fiduciaries of the assets of the membership. Assets of the membership are held collectively and are administered by the chief and council. Are there areas where the membership should have a say considering that the assets belong to every member in the community? Communities need to look at this and make decisions regarding when they want to have a say and the accountability measures they want to impose on their chief and council.

There needs to be some baseline criteria that chiefs and council must maintain, such as matters that need community consent and the percentage of voters needed to give that consent. This could include:

- **Expenditures and loans over a defined amount:** It has to be clearly remembered that a chief and council have responsibilities to run the community, achieve the best possible services and create economic opportunities. There must be a balance; the chief and council have to have some degree of flexibility to run the community. Alternatives include guidelines for the chief and council. Having good financial information that indictates what sort of debt load the First Nation is capable of carrying and that the council cannot exceed that without the consent of the community is one example. Another option would be that if a community endorses a project, such as a new community building or facility, members should be informed of the financing needed before agreeing to the project.

- **Laws that affect the communities:** What is the process of community consultation or consent? Section 81 allows councils to pass by-laws without mentioning the membership affected. There needs to be a defined process on community input on these by-laws.

- **Treaties, agreements-in-principle, self-government agreements and other major agreements:** What role does the membership play? What percentage of voters is needed on these major types of agreements? This should be clearly spelled out in a constitution or government framework. Experience has shown that ratification of things such as agreements-in-principle can be changed at the whim of the chief and council, depending on the perceived urgency to get community approval. Low voter turnouts have also been found acceptable when adopting something as major as an agreement-in-principle. Members need to know there are thresholds of voters needed in these instances, as well as the rules of the game and that they cannot be changed at the last minute.

Mechanisms for Removal of Leaders

The *Indian Act* allows for the removal of the chief and council if they are convicted of an indictable offence, miss three consecutive meetings, resign or die. There is no recourse in the communities if a chief or council member has been in a gross conflict of interest, or charged with a crime which is abhorrent to the community. (Many years can pass before that person is brought to trial.) Political pressure does not work the same way in First Nations communities as it does outside First Nations communities when a cabinet minister, premier or prime minister, or other leader has conduct which is not suitable to the community. Mechanisms must exist that allow for the removal of leaders when circumstances warrant.

Attention to Particular Issues that Affect Women

- **An order for possession of the matrimonial home:** Current case law dictates that the provincial laws that relate to land do not apply on a reserve. As most family laws are within provincial jurisdiction, courts cannot issue an order of possession for a matrimonial home. Women need to be able to access the right to retain the matrimonial home, especially when they have the children. The *Indian Act* must be amended to allow for this.

- **Valuation of homes on reserves:** This has become a contentious issue and usually results in the woman not getting anything from the value of the home. Placing a value on an on-reserve house has always been difficult. Guidelines need to be set which allow a fair value to be put on a house on a reserve to ensure that the woman is granted her fair share on breakdown of the marriage.

- **Restraining orders:** These may be obtained in the court system, but in remote or isolated communities, such orders are unenforceable due to the lack of a police presence. Systems need to be in place to protect women in these situations. Empowering councils to appoint a person to help enforce a restraining order, or passing a by-law or council resolution asking the individual to leave the reserve, is a possible solution. Most councils do not want to get involved in what they consider to be family matters, but women and children need to be protected from violence.

- **Maintenance:** Women should be able to obtain all relevant financial information from the First Nation concerning all moneys a man is receiving, including honorariums and travel. Women often have trouble proving that income is granted to their spouse because of uncooperative administration offices. Procedures must be established so this information is available in any proceedings involving maintenance. As well, a non-Aboriginal woman, whose children have a First Nations father, can have problems accessing the man's bank accounts or assets if located on reserve. The *Indian Act* should be amended so men cannot use section 89 for getting out of paying maintenance for minor children regardless of whether those children are First Nations or not.

Governance Legislation

> The structure of the governance legislation will be based on effective governance including clear roles and responsibilities for First Nations councils, accountability and transparency.[25]

Indian and Northern Affairs Canada is engaging in consultations with First Nations on First Nations governance legislation. This legislation is meant to apply to First Nations currently governed pursuant to the *Indian Act*. It will not apply to those, such as the Nisga'a, who are self-governing. The authors applaud such an initiative, but provide the caveat that any proposed legislation must be endorsed and consultations done on terms set by the First Nations. This would include setting the parameters, processes and time lines for any amendments. This should be a collaborative approach between the First Nations and the federal government. As well, First Nations governments, women's groups and other representative bodies must be consulted in a meaningful way and have input into the drafting of the legislation. It will, after all, affect everyday life for all First Nations members. The federal government failed in its attempts to assimilate First Nations, pursuant to the *Indian Act* and government policies. Hardship, grief and loss have been suffered because of the actions of the state. Therefore, any concerns presented by First Nations, including women's groups, must be honoured if First Nations are to engage in a meaningful partnership with the state.

The negotiation of treaties in British Columbia has included provisions for self-government. The proposed governance initiative should not interfere with what has been negotiated or is being negotiated, or slow down the process that has been taking place for eight years.

6. CONCLUSION

> As the debate over self-government progresses, the rights of Aboriginal women must not be forgotten. The historical responsibilities of Aboriginal women in Aboriginal societies must be secured and realized. The mistakes of the past cannot continue. The rights of Aboriginal women in Aboriginal society and government must be constitutionally guaranteed (Isaac and Maloughney 1992: 475).

The authors hope this report will make a contribution and provide some options and solutions to the continuing debate regarding gender equality and First Nations women. This review was done from a First Nations gender analysis that incorporates the perspective of two First Nations women who are mothers, lawyers and active participants in First Nations government and the treaty-making process in British Columbia. It is abundantly clear from the review of the literature and experience, both personal and professional, that First Nations women's concerns continue to be ignored in favour of those of many male leaders. In the meantime, women continue to suffer unconscionable levels of domestic violence and are often excluded from existing structures and negotiations on self-government and treaties. Or those women who are involved are not listened to. The concerns of women must be heeded, and all men and women must decolonize their mindset and liberate their First Nations.

The recommendations provided at the outset of this report and in the text will assist First Nations in providing good governance. The authors advocate most strongly for First Nations to honour governing structures that embrace gender equality and allow women to take their rightful place in the future of their First Nations.

Good governance for women should include provisions that assure women a role in all aspects of governance, a structure that allows for dispute resolution, rules of natural justice, the rights of all members, transparency and providing information to members, conflict-of-interest guidelines for decision making, criteria for removal of leaders, provisions to deal with family issues such as possession of, valuation of and division of matrimonial property located on reserve, obtaining maintenance for children of a First Nations member, and enforcement of restraining orders. On a larger scale, a First Nations ombudsperson and human rights panel could be established to deal with the more specific issues.

It is also strongly recommended that the federal government develop a joint process with First Nations and extend the time lines for the proposed governance legislation to engage fully and meaningfully with First Nations, women's groups and others affected in consultations. There must also be assurances to the First Nations in British Columbia negotiating treaties that this will not impair the progress of those negotiations.

Recommendations

The authors make the following recommendations for First Nations and state policy makers, legislators and negotiators.

- **First and foremost, the federal government must fulfil its promise, articulated in *Gathering Strength*, to fund (capacity build) First Nations women's groups, both local and national, to strengthen their participation in self-government processes.**

- Ensure the full and equal participation of First Nations women in self-government and treaty negotiations. In British Columbia, this could be done through the B.C. Treaty Commission as a requirement for negotiations. The federal government when entering into self-government negotiations could, as a prerequisite for negotiations, insist that there be women representatives on the negotiating teams.

- Ensure the full and equal participation of First Nations women in governance (both *Indian Act* and self-government structures). This could be achieved through amendments to the *Indian Act* or a requirement for First Nations to put provisions in their charter or constitution to ensure a role for women. Another alternative is to ensure that self-government agreements or treaties have specific provisions for women in governance structures. Onus for this should be equally on First Nations and the federal and provincial governments through policy or legislative requirements.

- Provide support (financial and otherwise) from Status of Women Canada and respective provincial women's ministries and advisory bodies for First Nations women's goals and aspirations, including full and equal participation in negotiations and governing structures. Where possible, core funding should be provided to First Nations women's groups.

- Include gender equality provisions in self-government agreements, treaties, First Nations charters/constitutions.

- Develop strategic vision statements, for and by First Nations, which include the contemporary realities of First Nations women and contribute to the developing First Nations discourse on self-government.

- Have *all* participants in treaty and self-government negotiations (federal, provincial and First Nations negotiators) use a gender lens.

- Ensure federal negotiators, policy makers and legislators adhere to the Indian and Northern Affairs Canada Gender Equality Analysis Policy.

- Use the federal Gender Equality Analysis Policy as a template for provincial and First Nations negotiators in the development of their respective tools for a First Nations women's equality analysis policy.

- Incorporate dispute resolution processes into First Nations' governing structures and prescribe broadly in the *Indian Act*.

- Enact conflict-of-interest laws, for and by First Nations, pursuant to the *Indian Act* or in self-government agreements or treaties.

- Broadly prescribe natural justice rules and procedures into the *Indian Act*.
- Include accountability frameworks for First Nations governments that embody principles of transparency, disclosure, redress and gender equality into First Nations governing structures (pursuant to the *Indian Act* or self-government agreements and treaties).
- Define the rights of members clearly, including such things as voting and access to information on assets held on their behalf.
- Examine the issue of a mechanism to remove leaders and expand beyond what is in the *Indian Act*.
- Accommodate in the revisions of the *Indian Act*, issues related to valuation of homes on reserve, division and possession of on-reserve property and specific issues relating to maintenance and enforcement of restraining orders.
- Have First Nations governments, women's groups and other representative First Nations bodies engage in full and meaningful consultation regarding the proposed governance legislation and its drafting. First Nations and the federal government must establish a consultation process jointly.
- Extend the time frame for the proposed governance legislation to effect meaningful participation and consultation with First Nations.
- Explore the possibility of national or regional human rights panels.
- Investigate the issues related to establishing a First Nations ombudsperson.

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ENDNOTES

[1] The authors used the term "First Nations" to mean the first peoples of Canada. The first peoples of Canada are land based and are identified by their various tribal affiliations, such as Nuu-chah-Nulth and Tsimshian.

[2] For instance, Institute of Inter-governmental Relations (1987); extensive series of reports on self-government issues by CBA (1988); Hamilton (1995); RCAP (1995).

[3] For instance, materials prepared for the Institute on Governance: Graham and Marques (2000); Graham (1999); IOG (2001, 1999a,b).

[4] The authors discuss both governance and self-governance within the scope of this paper. First Nations self-government is recognized and affirmed pursuant to section 35 of the *Constitution Act, 1982* of Canada. Many First Nations are resuming their rights to self-government through treaties, self-government agreements and assertion. As part of the transition to self-government, First Nations are moving from governing their First Nations (bands) pursuant to the *Indian Act* (which could be considered a form of expression of self-governance) to becoming self-governing. Rather than highlight self-government as an event that occurs on signing treaties and self-government agreements, the authors discuss both governance and self-governance seeing it as a process or transition to constitutionally protected self-government.

[5] The *Indian Act* is a piece of federal legislation which has, since the 1880s, regulated the lives of First Nations peoples in Canada and set out the rights and responsibilities for "Indians." Or, from the perspective of many First Nations, abrogated and derogated the rights of First Nations. The Act outlines governing structures for bands and sets out Indian status and membership eligibility.

[6] For example, Absolon et al. (1996b); Blaney and Huntley (1999); Borrows (1994); Brodribb (1984); Dion Stout and Kipling (1998); Herbert (1994); Kirkness (1987-88); Green (1993); Isaac and Maloughney (1992); Jackson (1994); Koshan (1998); Manitoba (1991); McIvor (1995b); Nightingale (1995); Murphy (1996); Weaver (1993).

[7] See also LaRocque (1997); Green (1993); Manitoba (1991).

[8] Including Dion Stout and Kipling (1998); Absolon et al. (1996b); Kirkness (1987-88); Isaac and Maloughney (1992); Borrows (1994); McIvor (1995b).

[9] See for instance, Borrows (1994); Green (1993); Nightingale (1995).

[10] These include Dion Stout and Kipling (1998); Borrows (1994); Herbert (1994); Green (1993); NWAC (1992); Manitoba (1991); RCAP (1996a).

[11] *N.W.A.C.* v. *Canada* [1994] 3 S.C.R. 627. The court held that there was insufficient evidence to support NWAC's contention that their right to freedom of expression had been denied on a discriminatory basis.

[12] *Constitution Act, 1982 - Canada Act*, (U.K.) 1982, c. 11: s. 35(4): "Notwithstanding any other provision in this Act, the aboriginal and treaty rights referred to in subsections (1) are guaranteed equally to male and female persons."

[13] For example, Graham and Marques (2000); Graham (1999); IOG (2001, 1999a,b).

[14] Adapted from IOG (1999b: Annex 3). The source is cited as: "Governance and Sustainable Human Development," United Nations Development Programme, 1997.

[15] Adapted from citation in IOG 1999b: Annex 5.

[16] *Assu* v. *Chickite* [1998]1 C.N.L.R. 14 (B.C.S.C.).

[17] *Rider* v. *Ear* [1979] 4 C.N.L.R. 119 (Alta S.C. T.D.); *Rice* v. *Council of the Band of Iroquois of Caughnawaga*, [1981] 1 C.N.L.R. 71(Que. C.A.); *Diabo* v. *Mohawk Council of Kanawake*, unreported October 3, 1975 (Que. S.C.); *Gabriel* v. *Canatonquin* [1980] 1 F.C. 792 (F.C.A.); *Trotchie* v. *R.* No. T-2558-76, unreported (F.C.T.D.) The *Federal Court Act* governs the Federal Court. Its jurisdiction is limited to federal undertakings and federal legislation. As the *Indian Act* is federal, there are some things that will go strictly to this court depending on provisions in the *Federal Court Act*.

[18] *Federal Court Act*, R.S.C. 1985, c. F-7 ss. 18(1), 18.1, 18.4, 18.5, 24(1) and (2), 26(1).

[19] *Bigstone* v. *Eagle* [1993] 1 C.N.L.R. 25 (F.C.T.D.).

[20] *Matsqui Indian Band* v. *Canadian Pacific Ltd.* [1995] 2 C.N.L.R. 92 (S.C.C.) *Indian Act*, R.S.C. 1985, c. I-5, as am. by R.S.C. 1985 c. 17 (4th supp).

[21] *Annette Sheard and Brent Weston* v. *Chippewas of Rama First Nation Band Council* [1997] 2 C.N.L.R. 182 (F.C.T.D.).

[22] *Campbell* v. *Elliot et al.* [1988] 4 C.N.L.R. 45 (F.C.T.D.).

[23] *Assu* v. *Chickite et al.* [1999] 1 C.N.L.R. 14 (B.C.S.C.).

[24] *Big "C" First Nation* v. *Big "C" First Nation Election Appeal Tribunal* [1995] 2 C.N.L.R. 54 (F.C.T.D.).

[25] INAC. "First Nations Governance Act – Qs and As." On the Communities First: First Nations Governance Web site. <www.fng-gpn.gc.ca>. Accessed June 11, 2001.

First Nations Women and Governance: A Study of Custom and Innovation among Lake Babine Nation Women

Jo-Anne Fiske, Melonie Newell and Evelyn George

ABSTRACT

Women of the Lake Babine First Nation of central British Columbia confront complex and enduring challenges to their aspirations for community leadership. Elders, hereditary chiefs, elected chiefs and councillors, and administrators have proposed a coherent web of recommendations to alter current Indian and Northern Affairs Canada policies respecting the structure and processes of First Nations government. They look to their own customs and to other levels of government for models when contemplating change. Their recommendations draw together proposals for amendments to the *Indian Act*, delivery of education and social services, and changes in internal governance to provide a new vision of First Nations women's empowerment. Working from their personal circumstances, they share recommendations that are meaningful to First Nations women across Canada.

This report examines their recommendations within the context of their cultural traditions and locates them within current work by First Nations legal and political scholars. It provides a comprehensive list of the recommendations for change offered by the women who participated in the project.

We dedicate this work to the women of Lake Babine in honour of the memory of Margaret Patrick.

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We wish to thank all the women from Lake Babine who contributed to this study. We are especially grateful to the elders and hereditary chiefs who responded to our invitation to join our focus group for a day and stayed for two. They enthusiastically shared their personal stories, political views and recommendations for developing policies on First Nations governance.

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EXECUTIVE SUMMARY

For more than 100 years, the *Indian Act* has regulated the public and private lives of First Nations women. Its history of paternalism and patriarchy has disadvantaged First Nations women in myriad ways. Despite recent efforts by the federal government to redress past wrongdoings, the legacy of patriarchal colonialism continues to affect women's daily lives. One source of Aboriginal women's disadvantage is the electoral system of governance imposed on First Nations through the *Indian Act*. Electoral policies mandated by Indian and Northern Affairs Canada have not led to gender equity in the governing processes.

This research addresses two questions.

- Can, and should, the *Indian Act* be amended to provide for more equitable governing powers between First Nations women and men?
- If amendments are desired, how can new regulations and policy improve the political participation of First Nations women?

These questions are approached through investigating the responses of Lake Babine women to such questions and comparing this information with published analyses of women and First Nations governance.

Summary of Findings

Lake Babine women envision a future for Lake Babine peoples that will provide new flexibility to their governing structures. From their diverse and heartfelt recommendations for policy changes, this vision emerges as one that reflects a balance between sound, autonomous empowerment of women in community governance and strength as a unified nation.

They seek more equitable governing powers between men and women through implementation of a number of changes that would make government policies more responsive to their life circumstances. Recognizing that gender equity cannot be mandated by policy but requires broad social changes, the women related proposed changes to government policies, to education, healing programs and cultural revitalization. Social change, they contend, is needed to overcome legacies of patriarchal colonialism, develop male support for female leadership and provide mentors steeped in traditional values to young female leaders.

Women of the Lake Babine First Nation confronted the weaknesses and limits of the current system of elected councils mandated by the *Indian Act* with recommendations that policies be instituted to define the roles of elected councillors, separate political and administrative powers, define fiscal policies and improve communications between women and their community government and other levels of government.

In light of the recent Supreme Court of Canada decision in *Corbiere,* the women recommended changes to the federal government's funding formula and to electoral policies to meet the expectations and newly endorsed rights of off-reserve women. These recommendations focus on improving election campaign procedures and expanding elected representation to include elected councillors to serve the off-reserve population.

Conclusions

Women of the Lake Babine First Nation view changes to federal and internal policies as one link in a chain of complex relations that shape their lives — at times inhibiting and at times enhancing their opportunities for leadership. Their understanding of what is needed to effect meaningful change to Indian and Northern Affairs Canada policy is rooted in strongly asserted values of honour and appreciation for the full range of women's achievements.

Gender disparity in community government is not, nor can it be, a matter of policies that evolve without consideration for women's social, economic and cultural concerns. Thus, when they look forward to having more women leading their community, they recognize that the community must first recognize the work women do on all fronts — work that links the public and private spheres through women's domestic leadership as well as through traditional and contemporary government structures and processes.

To this end, they have recommended changes to departmental policies and expressed their desire to consult with other First Nations women in a country-wide forum on amending the *Indian Act*.

INTRODUCTION

For more than 100 years, the *Indian Act* has regulated the public and private lives of First Nations women. Historically, the *Indian Act* deprived First Nations women of rights enjoyed by their male peers. Women faced limitations to their membership in their home communities and were denied the right to vote for and hold office. Changes have been made to the *Indian Act* to remedy these wrongs. However, the changes have not altered the basic relationship between First Nations women and the Canadian state. There has been affirmation of Aboriginal rights in the Canadian constitution, and recognition that these rights apply equally to women and men. Nonetheless, Aboriginal women continue to live at a disadvantage compared to their male peers and to Canadians as a whole.

One source of Aboriginal women's disadvantage is the electoral system of governance imposed on First Nations through the *Indian Act*. The elected councils have limited powers of governance in their communities. First Nations women living on reserves were denied the right to vote for or hold office in elected councils until 1951. At that time, the *Indian Act* was amended to permit them the same electoral rights as men. In 1999, as a result of the Supreme Court of Canada *Corbiere* decision, First Nations individuals who do not live in a reserve community won the right to participate in their nation's governing council elections. This eliminated some of the limitations First Nations women face with respect to the elected council. However, Aboriginal women still face discriminatory legislation within the *Indian Act*. The consequences of the Canadian state's explicitly sexist control over First Nations governance are myriad. Although some are obvious, such as the limited participation of women in elected councils, others are less clear. First Nations women scholars, however, have been adamant that the existing system of governance does not meet First Nations women's needs.

This research addresses two questions.

- Can, and should, the *Indian Act* be amended to provide for more equitable governing powers between First Nations women and men?
- If amendments are desired, how can new regulations and policy improve the political participation of First Nations women?

These questions are investigated through the responses of Lake Babine women, which are then compared to published analyses of women and First Nations governance.

This research is being conducted just as the Minister of Indian and Northern Affairs, the Honourable Robert Nault, has proposed changes to policies regulating First Nations governance. The Minister's desire to alter governance policies and his announcement that impending changes will be mandatory, were resisted by the Assembly of First Nations (AFN). The AFN feared the government was responding to criticisms that First Nations are not sufficiently accountable to the Canadian people with respect to the use of public money. In July 2001, the AFN reversed its position; rather than boycotting the consultation process, the AFN executive now proposes it be involved in order to confront the federal government over the inherent right to self-government (Phillip 2001: 2). If, as the AFN fears, the federal government wishes to amend the *Indian Act* to regulate internal governing decisions, the barriers First Nations women face in the governing process may be ignored or exacerbated. The proposed legislation may affect women of different First Nations differently.

1. LITERATURE REVIEW

The literature review begins by outlining the perceptions of academic scholars on Aboriginal governance and women's roles within governance. The goal of the literature review is not to provide an extensive critique of research on First Nations governance or gender relations in First Nations communities. Rather, it identifies key areas of concern affecting current initiatives of the federal government with respect to amending the *Indian Act*. Therefore, the review confronts the use of stereotypical concepts, "familialism" and factionalism by scholars who allege that current federal policy fails the Canadian public by refusing to hold elected councils accountable for their management of public money and for their alleged inability to separate private and public spheres.

Questions of First Nations accountability to Canadians are complex. They affect women's daily lives and shape their political opportunities and aspirations. Women's political concerns embrace and extend beyond fiscal transparency and intra-community relations. They are grounded in larger issues of constitutional rights, self-government, cultural difference and women's struggles to redress the colonial legacy of patriarchy and paternalism. The brief literature review that follows sets out these concerns to provide a foundation for interpreting political insights of Lake Babine First Nation women within this larger context.

First Nations Governance

With repatriation of the Canadian constitution in 1982, then Prime Minister, the Honourable Pierre Elliot Trudeau, committed Canada to accepting the notion of Aboriginal self-government. Since then, First Nations have struggled to bring meaning to this promise and to create governing structures that best meet the needs of their peoples. This struggle continues as First Nations seek diverse, culturally appropriate ways of governing themselves. First Nations also seek a full range of social, economic and legal services. The people try to attain these services through treaties or transfers of power from provincial and federal governments. As First Nations move toward greater autonomy and gain greater control over themselves, they face criticism from within their communities and from mainstream Canada.

Criticisms of First Nations governments are reported widely in the media, with the focus on questions of accountability and transparency, nepotism, deficit financing and the like. Since the media are likely to report bad news more often than good news, First Nations governments tend to attract negative attention. This, in turn, leads to general public awareness of the issues and to calls for federal government interventions that would see public money being used differently.

Perceptions that First Nations governments are failing their people are not restricted to the popular press. Academics, primarily political scientists, sociologists and anthropologists, also express dissatisfaction with individual First Nations governments and federal government policy. They identify a number of problems with the current practices of small First Nations governments and with federal public policy: misuse of funds, factionalism, nepotism, mistreatment of women and the lack of accountability to their communities among other failings (Cairn 2000; Smith 1995; Flanagan 2000).

Academics, who point to family "factionalism," oversized community government, collective ownership and the lack of investment as the cause of inefficiency and nepotism, speak of assimilation, individualism and private property as solutions (e.g., Flanagan 2000). Rather than having First Nations continue to govern themselves through elected councils that hold power over all resources and services, these critics call for a form of municipal governance that would establish autonomous education, health and social service boards.

From an opposing stance, others look to the impact of colonial legacies of racism, marginalization, unemployment, poverty and federal government control. They see these as the root causes of social alienation and ineffective, hamstrung governance. These scholars turn to treaty settlements, constitutional collective rights and parallel legal jurisdictions as remedies. They argue that these remedies will enhance self-governing powers and enable First Nations to follow a distinct road to cultural revitalization and economic well-being (Asch 1997; Russell 2000; Smith 1993).

The structure of First Nations governments has far-reaching implications for First Nations women. Their issues are not only of representation in existing institutions. Rather, they are complicated and often contradictory, associated with existing Aboriginal rights and constitutional protection (Fiske 1995, 1999; Jackson 1994). The issues are also not confined to gender relations or governing structures within a given First Nation. They are muddied by political tensions between Aboriginal women's organizations, such as the Native Women's Association of Canada (NWAC) and the male-dominated Assembly of First Nations, and by the lesser recognition given to women's associations by the federal government (Krosenbrink-Gelissen 1991; Fiske 1999). Moreover, the question of constitutionally defined rights spills over into the international arena and the global ethno-political movement of Indigenous peoples (Johnston 1989).

First Nations Women's Perspectives on Governance

First Nations women are apprehensive of prevailing critiques of First Nations governments and proposals for self-government. They express concern that these critiques are grounded in negative stereotypes (Johnson 2000; Browne and Fiske 2001). They are also concerned that calls to the federal government for transparency and accountability will lead to greater restraint on their elected councils without eradicating the problems women face. Many First Nations women worry that greater power through self-government could lead to gender discrimination without any rights of appeal.

Despite First Nations women's concerns respecting current governing practices and potential powers of self-governance, their views are often overlooked or subordinated to collective issues of culture and identity. (See for example Russell 2000; Flanagan 2000.) From both sides of the political perspective alluded to above, male critics focus their attention on questions of constitutional rights and amendment of the *Indian Act*. For example, they address the impact of recent changes to the *Indian Act*. Two amendments are of particular importance: Bill C-31 (1985) and Bill C-49 (1999).

Before 1985, First Nations women who were then registered as status Indians under the *Indian Act* lost status when they married men who were not status Indian men. These women, and the children of their non-status marriages, were stripped of all the rights and privileges of the *Indian Act.* These included the right to live and be buried on the reserve. Bill C-31 reinstates these women's status and their membership in the First Nation to which they had been born. It also gives status to their children. Bill C-31 has defects, however. It fails to grant the second-generation rights to First Nation membership or to transfer status to the third generation. It also provides First Nations elected councils with the right to create membership codes, which could, if the council wished, discriminate against women. Partial protection for women is safeguarded only through the requirement that the community must develop the codes, which must then be ratified by vote of the membership.

The struggle to remove sexual discrimination from the *Indian Act* was led by women's associations, notably NWAC. They were opposed by the AFN (formerly the Native Indian Brotherhood) and individual First Nations leaders (Krosenbrink-Gelissen 1991). As a result, NWAC and other First Nations women's organizations argued that self-governing First Nations should be subject to the *Canadian Charter of Rights and Freedoms* (Nahanee 1993; Green 1993). In 1992, the Canadian government excluded NWAC from constitutional talks leading to the Charlottetown Accord. The refusal of the AFN and other male-dominated organizations to support its legal struggle to be included reinforced NWAC's lack of confidence in self-government and in the federal government (Fiske 1999).

Under Bill C-49, which passed in 1999, First Nations that are signatories to the Framework Agreement on First Nations Land Management (FNLMA) and that have entered into an individual agreement with the Minister of Indian and Northern Affairs have acquired the right to determine how their reserve lands may be used and occupied. They can control marital property rights and the development and sale of resources. Inheritance rights for women are safeguarded to the extent that the estate provisions of the *Indian Act* continue to apply. The FNLMA asks however that land codes include procedures for the transfer of the land at the end of the estate process. The bill requires a membership referendum to endorse a council's land management code.

Only 14 First Nations have signed this framework agreement, but others are likely to follow. While this new power has moved First Nations to greater autonomy, it has not gone unchallenged. The British Columbia Native Women's Society went to court to protest the bill and the *Indian Act*. They were concerned that the bill does not guarantee that women will be treated fairly. It does not ensure women's access to marital property following divorce or that women have equal rights to inheriting homes or land. Their legal action was unsuccessful, and they eventually dropped the action, prompting them to argue once more that First Nations governments should be subject to the Charter.

First Nations women's criticisms of their elected chiefs and councils frequently focus on questions of housing rights. As Mary Ellen Turpel (1991) has argued, when First Nations women lack housing in their homelands, more is at stake than a share in marital property. Without housing, women may be forced to leave their community of extended family. Movement away from the community means a loss of social support, cultural continuity and the ability to sustain languages. Families are divided and new generations grow up without benefiting from their elders' wisdom and knowledge.

The experiences of women of the Tobique First Nation of New Brunswick illustrate the problems Turpel raised. When several Tobique women were denied housing, they organized protests against their chief and council. This led them to protest the sexual discrimination of the *Indian Act* all the way to the international court, which ruled in 1981 that Canada was violating their human rights. After Bill C-31 was passed in 1985, Tobique women continued to protest against unfair housing practices (Silman 1987).

Other problems arise when First Nations women's rights to housing are not protected. They may not be able to provide adequately for their children or protect their children from violence (Nahanee 1993). Women without secure homes also find it more difficult to cope with substance abuse and to care for themselves during pregnancy (Rutman et al. 2000).

While most First Nations women who write about their lives and their communities agree on the nature of the problems they face, they do not necessarily agree on how to resolve them. First Nations women lawyers debate the value of having First Nations governments subject to constitutional protections. Sharon McIvor (1995) has suggested that their rights are protected in Section 35(4) as "existing rights." The Federal Court of Canada upheld this view in the 1995 case of the Sawridge First Nation. In McIvor's view, First Nations women have had civic and political rights since time immemorial. She sees these rights as central to self-government. As a member of the British Columbia Native Women's Society, she struggles through court actions for constitutional protections for First Nations women.

Writing in 1993, Teressa Nahanee, viewed constitutional protection as necessary for First Nations women. She saw the struggle for sexual equality as a way for women to regain their place in their communities, and wrote of the failure of alternative justice measures to protect women from violence. In her 1993 report to the Royal Commission on Aboriginal Peoples, she called for the protection of women's individual rights under sections 15, 28 and 35(4) of the constitution. The conflict between individual and collective rights, she argued, lies in the patriarchal practices of the dominant society that has created male privileges within First Nations communities.

Patricia Monture-Angus (1995, 1999a, b) and Mary Ellen Turpel (1989, 1993) took the opposite view. Monture-Angus argued that application of the constitution would violate First Nations sovereignty. She recognized that the struggles of First Nations women living in reserve communities are severe. However, she also argued that "gender respect is an absolute requirement" of First Nations governments acting in a "traditional capacity in a traditional way" (1999a: 150). She emphasized women's responsibilities as being the key to traditional governance. Turpel also saw the application of the constitution as a threat to sovereignty. She pointed to the role of the Canadian government in oppressing First Nations women and expressed her distrust in its ability to protect the collective rights of First Nations governments (1989, 1991).

Other First Nations women seek solutions to their oppression in a return to traditional values and the strengthening of community life. For Betty Bastien (1996), survival of tribal identity has been possible because of the strength of women and their responsibility for children. Beverly Hungry Wolf (1996) addressed the need for First Nations women to speak out to reclaim the equality they knew in the past. She called on them to become more self-sufficient and to develop the resources of their reserve lands to regain traditions of the past.

Emma LaRocque (1996, 1997), however, cautioned women to be circumspect in their recall of tradition. She asked whether traditions are always liberating for women. She also noted that, within First Nations communities, men may well criticize women who assume elected leadership for "acting like men." She was critical of parallel justice programs that fail to protect women from violent offenders and expressed fear that this would force women to seek refuge in mainstream society.

The desire to balance traditional values and practices with contemporary values of participatory democracy poses particular challenges for women as their Nations move toward self-government. Traditional leaders whose authority is not recognized under federal policies often lead self-government initiatives. Traditions, even when they value, respect or honour women, do not necessarily protect individual rights or promote women's aspirations for leadership in emerging government structures (LaRocque 1997; Nahanee 1993). Nor do they necessarily lead to women's participation in elected councils. In 1999, only 13 percent of all chiefs in Canada were women (Monture-Angus 1999a). How well women are represented in traditional governing bodies, for example as hereditary or clan chiefs, is not known.

Marie Smallface Marule (1984) addressed these problems. She proposed new forms of government that would resurrect family–clan groups as the basis of authority. She rejected the imposed electoral system of majority rule, which causes tensions and conflicts rather than resolution of differences. A return to family–clan authority would limit larger groups to co-ordinating roles and restrict the formation of political elites. She did not address the implications for women in her proposal beyond calling for consensus decision making.

The need to understand these barriers to women's empowerment from their own perspectives has been raised by Monture-Angus and Turpel among others. Unlike Nahanee and McIvor, they rejected the individualism of feminism and found that much of what feminists say and do is highly paternalistic and oblivious to First Nations women's experiences and values. Feminists of the dominant society have searched for remedies through reform of political institutions and state policies to improve the gender ratio among decision makers. First Nations women may share the desire for greater female participation, but also envision new forms of local government that can better deal with their immediate social goals: improved health, education and social services grounded in traditional social orders, not the nuclear family (Rutman et al. 2000). From grass-roots organizations come demands for services separated from band council controls, and checks and balances on the powers of chiefs and councils primarily to stem the crisis of family violence and sexual abuse (NWAC cited by Smith 1993).

Male Responses to Women's Concerns

Because First Nations women are not well represented in their local governments or larger political associations, such as the AFN, it is important to consider what their male leaders propose as viable Aboriginal self-government. Do male political leaders and academics envision self-governing nations that will empower women and remove existing barriers to their participation in decision-making processes? How do political leaders and theorists respond to women's concerns that women and children "need a safeguard against the abuse of power by male leaders" (Gaily Stacey Moore, cited by Smith 1993: 224)?

Taiaiake Alfred (1999) approached women's concerns from a traditional stance. He rejected notions of individualism and any effort to measure women's status and well-being that draws on their success in institutional structures mandated by non-Aboriginal governments. He acknowledged the problems of violence and low levels of respect for women. However, he called on women to support the collective needs of the nation, "to commit themselves to making the nation livable from within the culture." Men, he suggested (1999: 95), are obligated to respect women and to "help eliminate women's heavy burden." In seeking sovereign powers grounded in traditional ethics of care and responsibility, he failed to offer practical solutions to women's immediate needs.

John Burrows, a legal scholar, did not address women's concerns respecting governance directly in his discussion of the Charter. Although the application of the Charter may be disruptive to First Nations, he argued, its precepts are congruent with First Nations values. He called for innovative forms of First Nations self-government that integrate tradition and Western democracy. He also envisioned expansion of Aboriginal law through its integration into Canadian state policy (Burrows cited by Cairns 2000).

Parallel government institutions have been the priority of the Assembly of First Nations. Former AFN chiefs, Phil Fontaine and Ovide Mercredi, endorse autonomous self-governing structures that have authority to sustain autonomous, or parallel, legal jurisdictions (cf. Boldt et al. 1986; Leroy et al. 1984). Although Phil Fontaine has suggested that First Nations governments' objectives are one and the same as those of healing programs and, therefore, would lead to protection for women, he has been accused of failing to take political action against male violence and sexual abusers.

Fontaine and Mercredi represent a common theme in the writing of male political elites and intellectuals. In their views, First Nations collective rights must be protected against individual rights. Imposition of Charter protections is seen as a threat to collective rights through the violation of cultural traditions that mandate distinct gender roles. Concentration on the larger issues of constitutional reform and the struggle for sovereignty, whether grounded in notions of cultural difference or inherent rights, fails to take up First Nations women's views of social policy and the portending amendments to the *Indian Act*. It is necessary, therefore, to conduct policy research independently of these competing interests, and to do so within research methodologies that are women centred and culturally sensitive.

Community Research and Feminist Methods

Research within First Nations communities must involve the members of that community. One reason this is so important is to avoid imposing a hierarchy on the research (Benoit 2001). Academic researchers can have socio-political power and privilege (Browne and Fiske 2001). This may limit their ability to reach community members and attain meaningful data from them. Therefore, it is important that the research team make efforts to include community members wherever possible.

Browne and Fiske sought to avoid power imbalances within research through the composition of their research team, the use of critically reflexive research and a memorandum of understanding with the First Nation that outlines shared control over the project and its findings. They also sought guidance from community leaders concerning appropriate research protocols and from participants on their analytical conceptualization and interpretations.

These techniques are some of the ways to adhere to standards of feminist research. These methods also allow teams to conduct research that avoids any further colonization of the group being investigated. As Linda Tuhiwai Smith (1999) emphasized, past researchers have colonized Indigenous groups through the construction of Indigenous groups as "other." Using theory that analyzes the structures that contribute to the colonization of Indigenous peoples encourages research that incorporates the perspectives of those people. Smith's work on decolonizing methodologies outlines the importance of considering the history of colonization of Indigenous groups. Her work is also important to anyone considering research with Indigenous women in any country. She has outlined many of the central ethical and methodological concerns for this type of research.

Incorporating community members into the research process is an important step toward recognizing the importance of experiential knowledge. The choice of methods is equally important in providing information about the people that is representative of their world view and lived experiences. The type of interview researchers choose affects the type of information that will be obtained. Feminists seek to investigate women's lived experiences as a means of understanding the importance of gender in the lives of women. Semi-structured interviews allow respondents to participate in the construction of research data arising from their own reality. This approach is valuable to feminist research because it allows for the generation of new theory through the exploration of the reality of the participants' lives from their own perspective.

Participatory action research is another method that allows researchers to avoid stigmatizing or colonizing the communities or individuals with whom they work. It is valuable when issues of gender and race are being investigated, because it allows the members of the research team to "share power, responsibility, decision-making." (Ryan 1993: 75). These abilities, coupled with the involvement of the community in the research process, allow researchers to ensure that the goals and needs of the community are being met within the research. These factors also limit the possibility of the research forcing the agenda of the research team. Participatory action research benefits the community for a number of reasons: it leaves expertise within the community, provides training to community members and documents community knowledge. This method also allows some of the research to be conducted in the language of the community, which provides the researchers with more information (Ryan 1993).

The Lake Babine First Nation actively seeks partnerships with academic researchers. Since 1993, the administration has vigorously prepared community members for a range of research activities. It initiated training programs for community researchers working in the treaty and self-government office and in health and social services. These researchers were trained to conduct community surveys, work in archives and record the life stories, legends and other cultural knowledge of the elders and hereditary chiefs. Graduate students (Sinclair 1997; Marucci 2000) worked with co-researchers, selected by the administration and hereditary chiefs, when conducting field research for their graduate theses. From these research initiatives, the Lake Babine First Nation has developed research strategies that ensure community participation throughout the research process, not just in the sharing of knowledge. The evolving research strategies reflect the social organization of the First Nation and are respectful of cultural traditions and protocols.

2. THE LAKE BABINE FIRST NATION

Like many other First Nations, The Lake Babine Nation of central British Columbia is in transition. It is seeking new ways of governing its 2,000 members by extending its authority over social, education and health services. The Nation has turned to the treaty process under way in British Columbia to negotiate a new nation-to-nation relationship with Canada and the province. However, uncertainty prevails within the treaty process as a newly elected provincial government plans a province-wide referendum to seek direction on its mandate in this regard. This uncertainty is heightened by the federal government's intent to impose new *Indian Act* policies on all First Nations. Nonetheless, Lake Babine leaders are optimistic that positive changes are forthcoming and view this research as a contribution to their efforts to make changes that reflect the goals of all their members, wherever they live.

This chapter introduces the traditional government of the Lake Babine people, the *balhats*, and the system of matrilineal clans and hereditary chiefs. (See Fiske and Patrick 2000 for a fuller discussion of Babine culture and society.) The system of elected government that is structured according to policies laid out in the *Indian Act* is also described. Self-government initiatives are being made through the work of the treaty and self-government office. These encompass broad policy changes that contemplate reorganization of the Lake Babine First Nation to create greater autonomy for each of its five communities. New relationships with the province and federal government will also bring about policy changes as the First Nation seeks to re-establish traditional authorities over its ancestral territories and moves toward new economic developments.

Traditional Governance

The Lake Babine First Nation is known as the four-clan nation. Its traditional governance arises from the authority of the hereditary chiefs of the four matrilineal clans. For eons, the hereditary chiefs have managed the ancestral lands of the First Nation and have held responsibility for the social and economic well-being of their people. Hereditary chiefs succeed to office through the authority of their clan members. The position passes within an extended family unit through matrilineal descent, from mother to daughter, uncle to niece or nephew, for example, or to other close family members through the matrilineage. Each hereditary chief succeeds to an office within her/his matrilineal clan by taking a hereditary name that carries with it specific obligations and authorities. Some, but not all of the names, also carry rights and obligations to specific tracts of land within the ancestral territories. Hereditary chiefs are authorized to make governing decisions, settle disputes and uphold the customary laws of the Nation. At present, about one half of the approximately 100 hereditary chiefs are women; the head chiefs of all four clans are men.

Hereditary chiefs exercise their authority and meet their obligations through the *balhats*, a form of government known to outsiders as the potlatch and to community members as the feast. The *balhats* is a complex exchange ceremony and feast at which the actions and authority of the chiefs are validated by the whole community. Each hereditary chief pays for her/his name by hosting a series of feasts and honouring members of the other clans with gifts of food, money, household items and other personal presents.

The four head chiefs speak for their clan at the *balhats*. The ceremony is hosted by one clan and attended by members of the other three, who act as the witnesses to the proceedings. The host clan honours the guests with a feast and gifts in tribute to their role as witnesses. As many as 30 or 40 *balhats* may be held in a year. Among other reasons, they are held whenever a member of the Nation passes away, when a member succeeds to a hereditary name, to mark the end of mourning, to settle disputes between chiefs and to discuss significant matters such as treaty negotiations or socio-political relations with neighbouring First Nations.

Hereditary chiefs engage in the governance of the Nation in a number of interrelated ways that combine their traditional obligations with current socio-political relations of the First Nation and the Canadian state. They must be sensitive to their relations with other First Nations and be able to lead their people into new relationships with Canada through negotiations with multiple levels of governance: municipal, regional, provincial and federal. As Canada enters into more complex international relations (e.g., the *North American Free Trade Agreement*), the chiefs find their work more pressing and their responsibilities more intricate. At the local level, their engagement in governance is also expanding as they undertake key roles in justice (e.g., clan sentencing and sentencing diversions), education, health and social services. As stewards of the land, hereditary chiefs are critical to negotiations with the provincial and federal ministries of forests, the environment, fisheries and oceans, and other ministries relevant to resource industries and development.

Hereditary government is integrated with the elected government in a number of ways. Through administrative funds allocated to the elected council and through communal resources of a commercial salmon fishery, a number of female and male chiefs are awarded a monthly stipend for their participation in governance and community obligations. These chiefs are often spoken of as the "paid chiefs." Their monthly stipend enables them to participate directly in the community governance. In return for the their stipends, they respond to invitations to attend government meetings, participate in research projects, join advisory committees and boards of directors for community and/or alternative economic and development projects, and attend other ad hoc meetings and activities sponsored by ministries and agencies of the provincial and federal governments. While these hereditary chiefs may be more active than others, this does not mean they are the only ones involved in the Nation's governance. Others are also active; they may receive honorariums for their specific activities, but cannot rely on a continuing stipend for their work. Because the elected council cannot reward all hereditary chiefs in an equitable manner, the selection of some for a monthly stipend is a sensitive matter which, if not handled carefully, can create tensions.

Electoral Government and the *Indian Act*

The authority of traditional governance is not recognized by the *Indian Act*, which provides for an elected chief and council. Under the Act's provision for custom election, a First Nation may establish its own election procedures and the duration of office. The Lake Babine First Nation elects its chief and council every three years. Four communities of the First Nation elect councillors based on proportional representation. Woyenne, the largest community, elects four councillors, Tachet and

Fort Babine elect two each, and Old Fort elects one councillor. Donald's Landing, the smallest of the communities does not have a council seat.

The federal government has interpreted section 91(24) of the constitution as granting it general power to impose legislation on First Nations. Consequently, through the *Indian Act*, the federal government has established the limited authority of the elected council. Indian and Northern Affairs Canada (INAC) establishes funding levels and program delivery with the Lake Babine First Nation through negotiated agreements.

Through negotiations with other ministries, the governing role of the elected council has recently expanded. A transfer of health services took place in 1997 with the signing of an agreement with the First Nations and Inuit Health Branch of Health Canada. Responsibilities for social services have also been transferred to the elected council from the province. The elected council is responsible for hiring administrative, professional and service staff to administer all programs for Lake Babine communities. The chief and council also have the responsibility to allocate resources, such as housing. Thus, the members of the Lake Babine First Nation depend directly on their elected chief and council, which has far greater authority over them than their hereditary chiefs. Hereditary chiefs, however, may influence the elected council in several ways. The hereditary chiefs have their own council, with equal representation of women and men. This council meets monthly to advise the elected council on issues facing the First Nation. Members of this council also sit on community advisory committees whose membership includes elected councillors, administrative and professional staff, and other community members who have particular expertise and experience.

The federal government has mandated secret ballot elections in the name of human rights and democracy. However, the electoral system has failed to provide women (and men) of the Lake Babine First Nation with a form of governance that is conflict free or that meets their individual and collective needs. Triennial elections create tensions and bring community relations disagreements and long-standing conflicts to the forefront. In the academic literature, these periodic disruptions related to electoral processes are most often labelled "factionalism" or "family feuding" and are understood to arise from family-based competition over the scarce resources that flow through the elected chief and council. Election tensions and disagreements, however, are more complex. As with democratic elections elsewhere, open expression of dissent is essential to democratic processes. The dismissal of dissent as "familialism" fails to consider the strong family ties that underlie the traditional governing system of hereditary chiefs. Superficial criticism that calls for a separation of the private and public spheres also fails to consider women's traditional roles of responsibility and care that unite women's family lives with their public obligations to provide caring leadership.

Lake Babine First Nation members seek to resolve the tensions created by the current electoral system that fails to legitimize traditional governance and denies equity among the five communities. The grand council concept is one such proposal that the women interviewed have considered seriously. This concept would provide for autonomous governing councils for each Lake Babine community linked through a grand council whose powers would be limited to a co-ordinating function. This system would give each community independence in building its own governing links between the hereditary chiefs and an elected council.

The grand council concept and other innovative proposals listed below speak to the Lake Babine women's commitment to governing structures that would provide a balanced integration between an elected council and traditional governance. Their views on governance reinforce the positions advanced by the First Nations scholars: community governance requires a foundation of traditional values and an infrastructure that will provide for women's commitment to community well-being and effective social services (Alfred 1999; Bastien 1996; Marule 1984; Monture-Angus 1999a).

3. THE RESEARCH PROCESS

The Research Team and Community Support

The chief and council of the Lake Babine First Nation endorsed this project. They approved the hiring of the research assistants, Evelyn George and Melonie Newell. Chief Betty Patrick worked with the researchers to provide introductions to councillors and administrators. The Treaty and Self-Government Office provided support in kind for the research to extend and enhance community participation in all five communities. It also provided additional staff for the focus groups. Translators and note takers assisted with recording the proceedings and provided translations for elders and hereditary chiefs. These staff members have expertise and skills in communication, translation and research, and in inter-governmental relations with neighbouring dominant communities and the dominant education system. The Treaty and Self-Government Office also provided support for the researchers to travel to Fort Babine, Tachet and Vancouver to ensure that women of all the communities as well as those living off reserve were included in the project.

The researchers hired on this project have different qualifications. Evelyn George, a member of the Lake Babine First Nation has been an elected councillor and administrator for the First Nation. Evelyn is a student at the University of Northern British Columbia in the First Nations Studies program. Evelyn worked with Jo-Anne Fiske on past research projects. In addition to these qualifications, Evelyn is fluently bilingual and has training in communications.

Melonie Newell is a gender studies master's student at the University of Northern British Columbia. She has completed her Bachelor of Arts in Sociology. Melonie has academic training in methodologies conducive to this research. She has also studied feminist theory and methods, which enabled her to analyze the information through a gender lens. Melonie Newell contributed to an academic analysis of the information gathered during the project.

Jo-Anne Fiske has been working with the Lake Babine First Nation since 1993, when she began work on several community-based research initiatives with the Office of Hereditary Chiefs and the Treaty and Self-Government Office. These projects included an extensive program of training for community researchers (Fiske et al. 1996), a study of Lake Babine First Nation family organization with another Lake Babine member (Fiske and Johnny 1995) and a study of the Lake Babine traditional legal order (Fiske and Patrick 2000).

The Selection of Participants

In keeping with principles of community-based research and feminist methods, this project involved community members at all stages of the research process. Chief Betty Patrick, Deputy Chief Nancy James, staff of the Treaty and Self-Government Office and Evelyn George provided guidance in the selection of participants. Their help ensured the selection of women who had participated in the First Nation's government as well as community members who wished to share their views on community governance. Working from suggested participant lists, the researchers contacted women for interviews. They, in turn, suggested additional women to contact. Thus, it was possible to select women who met the initial criteria of having prior experience in the elected council and administration, and women who in the eyes of others had valuable experiences and insights. Conscious that any community experiences a range of political differences, researchers sought participants who openly express opposing views and political interests in order to avoid having the sample population restricted to a single interest group.

Consequently, women from each of the four clans and five communities participated. They ranged in age from their early twenties through to their eighties. Off-reserve women living in Vancouver and in communities closer to the First Nation were also included. Women who have been successful in their political aspirations, and those who have not, participated in interviews and in the focus groups. By having women with diverse experiences in on- and off-reserve communities participate in the research, policy recommendations were as representative as possible of the Lake Babine First Nation women's concerns and political goals.

The Interview Process

The researchers on this project determined that the best process for the interviews was to work as a collaborative team. This division of responsibilities would provide the opportunity for all of the researchers to work on each aspect of the project. Although it was not possible to have the responsibilities for the interviews divided equally among the researchers, all the researchers had the opportunity to participate in each aspect of the project. The division of responsibilities reflected the experience of the researchers and their ties to the community. The division of work into a collaborative team rather than a hierarchy is in keeping with feminist research and also the established research practice of the Lake Babine Nation for projects originating outside of the First Nation (Fiske and Johnny 1995; Marucci 2000; Sinclair 1997; Fiske and Patrick 2000).

Each researcher participated in the interview process. The interviews were conducted in the offices and homes of the participants. All the interviews were taped and then transcribed. Evelyn George conducted interviews with women who preferred to speak in Babine and then translated and transcribed the interviews for the other researchers. Melonie Newell and Jo-Anne Fiske conducted interviews with women who were comfortable speaking in English and in discussing women's roles in governance with people from outside the community.

The interviews were done with an open-ended questionnaire devised by the three researchers. Two questionnaires were developed: one for elected council and administration personnel, and a second for the elders and hereditary chiefs. The questions for the elected council and administration personnel covered three themes: their reasons for taking on the position or running for a position in council or administration, the barriers to women's success within governance and recommendations for change. Elders and hereditary chiefs addressed issues of traditional values and governance, the capacity of elected council to meet their families' social and economic needs, and internal government structures. The interviews were conducted in private at a place of the participant's choice. The project was explained to the participants, who were encouraged to ask questions about the reporting procedures and any possible impact the project might have on them. When the project had been discussed, the researchers provided the participant with a written description of the research and a consent form that was signed (see appendixes). The consent form guaranteed the confidentiality of the participants and asked them what they would like to have done with the tapes of their interviews. There were three options: they could be returned to the participant, held by the researchers (and destroyed) or given to the Treaty and Self-Government Office to use in further governance projects with the First Nation after the completion of this research.

Ten interviews were conducted and analyzed to draw out the three themes: women's reasons for taking on the position or running for a position, the barriers to women's success within governance and recommendations for change. The interviews were then analyzed a second time to identify emerging themes and policy recommendations. When the interviews were completed, the research team conducted a preliminary discussion of the interviews before proceeding with the focus groups.

The Focus Groups

The research team decided to use focus groups to give as many women as possible the opportunity to speak about their roles in governance. On a practical level, the use of focus groups allowed the research team to attain ideas from more women in a shorter period of time than was possible in individual interviews. This was necessary as this project only had eight weeks for completion. The use of focus groups also allowed participants to share ideas and to encourage the generation of ideas for change, which were then used to formulate recommendations. Some women expressed the need for women to have more opportunities to address these issues with other women. This statement displays other benefits to focus groups. The need for these types of opportunities is further discussed within the recommendations.

Two focus groups were held for this research: one for elders and hereditary chiefs, and one for past and present administrators and political leaders. Nine women attended the focus group for administrators and elected leaders; 23 attended the elders and hereditary chiefs focus group. Fewer women were able to attend the first focus group because of multiple demands on their time. While the nine who did attend were released from their other obligations, the other women invited were not free to leave their jobs for a day.

The focus groups were held in the Lake Babine Nation's Administration Centre at Woyenne (Burns Lake). The meetings lasted from 10:00 a.m. to 2:30 p.m. Lunch and refreshments were provided. Holding the meeting in Woyenne had both positive and negative consequences. On the one hand, it meant women from the largest of the five communities could attend; on the other, it excluded women from the smaller communities due to travel times and costs. The relative isolation of Tachet and Fort Babine (the latter being accessible only by a logging road) prevented several invited women from attending the focus groups. The women who did attend were compensated for their travel costs, and anyone not on the payroll received an honorarium.

The research team had originally planned for the focus groups to be all-day meetings. The focus group for elders and hereditary chiefs was extended to a second day, because the women felt they needed extra time to discuss all the issues. The focus groups for the elders and hereditary chiefs were conducted in English and Babine. They were video taped and audio recorded. However, the focus group for the past and present administrators and politicians was not video taped as some of the women were not comfortable with this approach. They said they would be less forthcoming with their ideas with a video camera operating. The meetings with the administrators and politicians were conducted in English. During all the focus groups, there were two note takers and translators present. The research team had a video recorder present provided by the Treaty and Self-Government Office.

The Treaty and Self-Government Office also provided a facilitator for the focus groups. This person has training in facilitation, is fluent in the Babine language, but is from a nearby First Nation community. However, some participants were not comfortable having a person from outside the community facilitating the meeting. Several felt a community member should have been chosen. A community member, they suggested, would have had a clearer understanding of the specific workings of their traditional and contemporary governance systems. Some women were concerned that the job had been given to someone outside the community when there are women of the Nation who have the necessary skills for the tasks but are unemployed. The desire to select a community member reflects a number of issues addressed below.

The research team and the staff working with them recorded the women's contributions on flip charts. There were two reasons for this approach: it allowed the researchers to take notes and it allowed the participants to see how their information was being recorded. This gave participants the opportunity to correct and clarify their points for the research team.

The nine women who attended the first focus group varied in age from their twenties to their fifties. The women had worked in many different areas of administration, and some had run for office or been elected representatives. The themes, barriers to women's participation and success within governance, and recommendations, were drawn out of the recorded notes by the research team. Each new recommendation was numbered, and any notes that fell into the same recommendation were given the same number. Once the flip charts were analyzed, the recommendations were then organized into the main themes.

The process differed for the second focus group, which was also conducted with a conversation-like style. However, the women specifically addressed recommendations and were much more willing to guide the research team to the issues they felt were most important. These women spent a great deal of the first day discussing the impact of governance on their lives and sharing personal experiences that related to their lives as members of extended families. The stories the women shared displayed the impact of government policy and the ramifications of the bicultural lives that women in First Nations communities face daily. At the end of the first day, the women had essentially finished discussing the problems they face and were ready to begin to make recommendations. They made very clear recommendations. These suggestions were written down on the flip chart paper as the women took turns stating their specific recommendations. The research team then analyzed their personal stories.

The elders and hereditary chiefs were enthusiastic about the research and drew on the process to formulate recommendations that their chief and council could act on quickly. They used the opportunity to plan initiatives they believed were important to the community and which could be implemented within the current infrastructure. One such initiative was to delegate people to begin a drop-in centre for women. It is not clear, however, whether the women will be successful with this plan without the support of government funding or the chief and council. Several of the elders and hereditary chiefs requested further meetings that could lead to actions that would incorporate traditional and contemporary forms of government. Their views of governance clearly indicated a wish for INAC policies to be flexible to allow for governing bodies that are founded in traditional values and social organization. It was clear that the elders and hereditary chiefs feel current policies, as mandated by the *Indian Act* and INAC policy, do not meet their needs.

Theory

This research is informed by theories that draw on a gendered analysis of the legacy of colonization, power relations between First Nations and non-First Nations governments, and the political economy of peripheral communities. This eclectic approach grounds the research in key assumptions regarding the nature of power and gendered politics in contemporary Canada. As other researchers have identified (McIvor 1995; Nahanee 1993, 1997; Turpel 1989, 1991, 1993; Monture-Angus 1995, 1999a, b), the colonization of the First Nations is marked by the patriarchal disruption of traditional gender relations. For the Lake Babine First Nation, this has meant a disruption of the values of a matrilineal social organization and the access to, and control over, vital resources women once held. As with other First Nations, power relations between the Lake Babine Nation and other levels of government give privilege to male participants in decision making controlled by non-First Nations governments, and valorize knowledge that has been constructed by men for the benefit of men. This valorization, as the work of Smith (1999) makes clear, parochializes knowledge not produced by Western science and social thought, and further delegitimizes the experiential knowledge of women pushed to the social margins by colonial prejudices and an industrial market economy.

Failure to valorize women's knowledge and experience lies at the heart of colonization and strategies of assimilation that have shaped federal Indian policy since the 1876 *Indian Act*. Disregard for First Nations women is compounded in a political economy that values individualism and private property above collective rights and ownership. It is within this process of assimilation into a market economy that the traditional realm of extended family and clan politics is so readily distorted and read singularly as "familialism" and discordant factionalism. Women are marked as "other." The political processes inherent to extended families and domestic economies that privilege traditional values and family or clan obligations are reinvested with government-driven paternalism such as the current move of INAC to impose unilateral changes on First Nations governance through *Indian Act* amendments.

Recommendations for changes in governing policies articulated by Lake Babine women reflect theoretical positions that resist privileging non-Aboriginal male authority and non-Aboriginal knowledge. Their recommendations emerge from a women-centred analysis grounded in traditional values of obligation and respect that echoes the visions of Bastien (1996), Smallface Marule (1984) and Rutman et al. (2000) all of whom envisioned new forms of governance that would better deal with women's immediate social goals.

4. FINDINGS AND RECOMMENDATIONS

More equitable governing powers between men and women can be reached through a number of the recommendations that came out of the research with the Lake Babine women. These women addressed several issues, from policy to domestic life, that limit their ability to participate more fully in community politics. These issues need to be considered in the development of both INAC policy and Lake Babine First Nation policy. Colonization has led to social relationships and gender roles that limit the ability of these women to participate in their own governance. The women that took part in this research were clear about the impact colonization has had on their political and personal lives.

It is important to recognize the consistency with which the women responded to this research. They varied little in their identification of barriers to their participation in governance and made recommendations within eight major themes. Many of these themes are interrelated. The importance of the relationship between the themes is discussed in Chapter 5. The recommendations are presented according to themes, which helps illustrate the consistency of the women's responses.

Why Did Women Choose to Become Involved in Governance?

> *Because I thought I could make a change. Because I thought that I could bring some dreams or vision to the Nation.*
>
> *I wanted to make a difference to mostly my people but for women too. That we're a matrilineal nation and we have a voice and I wanted to make a difference.*

Change was the common theme through the women's responses to questions about why they became involved in governance. They may have different visions of what changes need to take place. However, the underlying goal of innovation is still apparent. One participant indicated that increased development was her main drive in becoming a leader.

> *I'll take that challenge because I didn't want to see a lot of the development left on hold.*

This woman also addressed the difference in male and female leadership in the area of development.

> *I find that under the women's leadership there are more developments that are innovative, in comparison with the males.*

She felt that men were able to foresee the need for change but were not as successful in getting the end results in "black and white."

Many of the women also saw a need for a change in leadership not just in the policies and practices of the governance system. One woman discussed her understanding that she had the qualities needed to be an effective leader.

> *I feel that when you're in leadership you really need to have the education, the experience and the qualifications to be a leader and also to be healthy. You have to be a healthy person to be a role model for any organization. You have young people viewing you as a role model and I know with our First Nation, men (a lot of them) are not happy because they're into alcohol or their attitude of being a male chauvinist.*

This participant expressed the need for strong leadership that can provide a role model for the community and, therefore, change the community by offering the youth an outlook for their future. Her views echo the words of Betty Bastien (1996), who stressed the need to strengthen community life through women's leadership and the incorporation of women's traditional caring roles.

Other participants also indicated that the need for change drove them to participate in leadership roles. One woman commented:

> *I felt that there were a lot of problems with administration and I would bring a lot of expertise into the band council administration and also to come up with some healing initiatives so that we could heal our Nation.*

It becomes apparent that many women entered politics or administration to effect some form of change. The types of changes the women were motivated by differed substantially. However, the common theme was that women wanted to see improvements within the leadership and within the Nation.

A second common theme centred on members of the community and their families often viewing these women as strong and effective leaders and requesting that they become involved in governance roles. In words that echo Patricia Monture-Angus (1995, 1999a, b) and Betty Bastien (1996), they stressed the strength of elders' teachings in empowering women.

> *You're always taught by your elders that you can conduct yourself in a professional manner in public. And you're always a person that is viewed as a doer.*

A few participants said they had left the community to work in other regions and were called back by family members. One of the strong components of this trend is the mentor relationship between older community members (specifically women) and younger women. This mentoring between the generations is seen as a strong value that is imperative to the success of the First Nation. Many suggestions focussed on this value, as seen in the recommendations. As these responses indicate, it is important to have policies that encourage mentor relationships between younger women and their elders. This is a traditional relationship that empowers women in their pursuit of political leadership. Enabling the traditional system of political training to work alongside contemporary training for political leaders is seen as key to the successful participation of women in governance.

What Are the Barriers to Women's Participation and Success in Governance?

> *So many walls...departmental walls...there were boundaries all over the place.*
>
> *As women leaders, we still have to be responsible for a lot of things at home. And that makes it double hard because we're trying to run homes and we're trying to be wives and then to care for the Nation's business at the same time. That makes it really difficult.*

A main concern of the women was that they were unable to accomplish their goals once they were in governance. One reason for this difficulty was the confining nature of bureaucracy for the women. This issue was one reason for the recommendations for clearly defined roles for the chief and council and that administration and politics be separated. Some negative aspects of the contemporary governance system were

> *adopted from the government down to our people.*

As one woman said,

> *a lot of political, bureaucratic stuff [has become a part of the governance system, which has resulted in] no equality.*

Like Marie Smallface Marule (1984), they favoured a government structure that would enhance the First Nation through government grounded in community decision making rather than in federally mandated procedures.

One administrator identified the lack of funding as a barrier. Under the present situation, it was not possible to

> *stretch the dollars for all the reserves, especially the grass roots.*

Not having the resources to care for the needs of all five communities has a negative effect on the women's success in governance. The combined fiscal and bureaucratic barriers affect the level of service the Lake Babine First Nation receives from its government system.

Many of the barriers women experience to participation and success in governance relate to their roles in the family (cf. Hungry Wolf 1996; Bastien 1996). In the past, men and women shared responsibility for child care, work and decision making. With colonization, men became the breadwinners; women were responsible for domestic duties. The roles of women in community and family decision making were diminished.

> *Sometimes you have four kids, five kids, six kids, even two. It stops you from going ahead because when you take a position in administration, there is no set allowance for...our women to have baby-sitters, there's no set allowance for house cleaning. What little money we do make has to pay for that and so you*

> *have to be two, you have to be a mother and administrating at the same time you take care of your kids.*

For some women, their roles within the family have been flexible enough for them to become involved in governance. However, those roles have not changed to the extent that they fully accommodate the duties of administrator or elected councillor. As a result, these women must bear the double day: they work their full-time jobs within governance and then work a full day within the home taking care of domestic duties. Many indicated that some community women are unable to participate in governance because they do not have the support of their family. One woman explained:

> *Some...men would have the male chauvinist attitude that First Nations women belong at home bare foot and pregnant.*

Another issue was the support of the husband emotionally and technically. When one participant was asked how her husband supports her in her governance role she responded:

> *We share the work, both business and personal and he's very understanding and respectful and trusting. Because he knows that I have a lot of meetings with men and working with men. I know a lot of First Nations women that have sensitive spouses and I was fortunate to have a husband that you know is understanding and very supportive; that is part of my success.*

Just as Teressa Nahanee (1993, 1997) and Emma LaRocque (1996, 1997) have identified sexism and patriarchy as barriers to women's empowerment and well-being, the women of Lake Babine indicated that sexism plays a large role in the barriers they experience in governance.

> *It's a man's world.... The last time, they wanted to hire, elect a man for a change. They didn't want another woman chief.*

One woman was asked if she had experienced support from men in administration. She replied:

> *Not as far as I've been alive.... I started a healing centre and I got a letter of support from a female deputy chief and I did ask some of the male people from our Nation and they never budged.*

Some women felt the need for healing within the community posed barriers to women's success in governance. For example, one participant expressed concern over jealousy.

> *They really pull you down. It seems like in our Nation not just with the women but with everybody, especially the women, it seems like whenever you try to get ahead, they pull you right back down again. They don't want to see someone successful when they are not feeling like they are themselves.*

Many of the participants addressed this problem within the community and felt that healing had to happen in order to have a successful administration and chief and council without jealousy from others.

Unemployment is also a major factor in the ability of women to participate in governance. It affects the social lives of women through their own unemployment as well as through their husband's unemployment.

When asked why it is hard for women to move up in administration one participant responded:

> *I always wished that it was not because I was a woman, but obviously that's probably why. Because maybe we don't belong in the old boys club. I have not really thought about it because I don't really want to face the fact that that's the way it might be. That men might be meeting in the rooms somewhere and deciding that maybe I'm too assertive and that maybe I'm a little bit smart and maybe that I can get things done better than a man can. I hope that's not the reason that it's hard to get up [in administration]. Probably is.*

This woman went on to explain that she had faced strong opposition when she was part of the governance system. The opposition was so strong that she had to call on the police. Although she did not discuss the specifics of what happened, it is clear that initiatives to increase male support for women in leadership are needed within the communities of the Lake Babine First Nation.

One woman spoke of issues surrounding nepotism within the governance system as a barrier.

> *Being related to people or other people being related to others so they could not do their jobs like they should. And being afraid or being warned in a way where you start to wonder what you say is OK because I always thought business was business. And relatives are not in business. So that was my negative experience.*

Another woman spoke about political battles becoming family battles in which one family will fight another. This woman considered this a barrier because she has faced anger from community members as a result of governance decisions made by family members. For this woman, this was a negative experience that caused her to fear involvement in governance.

Many women feel support is lacking from men in the community. This greatly influences their ability to participate successfully in governance. One participant indicated that a council member does not listen to women. Apparently, there was a time when he did listen but he no longer does. She gives an example of an elder woman that he used to take guidance from and then goes on to say that since he has received some education he no longer listens to women. The woman describes how the elder

> *talks to him, but the words he does not put into his heart and does not use it.*

Some younger women expressed concern that men were not listening to them because of their gender and age. The women made recommendations to incorporate youth and women within the governance system so young women will feel safe and supported in pursuing their goals.

Lack of encouragement also affects women's abilities to advance in leadership roles. One woman uses her own experience when she considered attaining an education and did not receive support from men as her example. She stated that the women who were taking the same training did encourage her, but she did not receive support from the community. This woman believes this is one of the main reasons she did not attain the education she wanted.

The main barriers identified by the women were sexism, bureaucracy, lack of education, lack of support and not being heard. The recommendations deal with these issues and offer solutions. The following suggestions are policy recommendations — changes the women perceive would help create a more equal footing for women pursuing roles in administration and governance. Although the recommendations would help women in governance roles, these suggestions are also part of a bigger picture the women envision as being beneficial to their First Nation as a whole. The need to empower women is not divorced from the need to empower the Lake Babine First Nation in its entirety. Furthermore, many of the women view their recommendations within a national framework, in which many First Nations and First Nations women could benefit from the implementation of the following recommendations. In doing so, they affirm the positions taken by legal scholars Sharon McIvor (1995) and Teressa Nahanee (1993, 1997).

The participants to this research offered many recommendations for policy changes at all levels of government. These have been grouped into themes that reflect the holistic linking of diverse issues from education through *Indian Act* reform to changes in internal government structure. Their recommendations are grouped into themes that emerged consistently from their suggestions for policy change and *Indian Act* amendments. The 22 recommendations provide a synthesis of their work and are drawn from the list of changes they see as most significant to the continuing development of their governing structure.

Education

> *Education, the government wants them to be educated. The Native people should hold them to it. They should not just educate people half-ways. They should be held responsible to educate people until they're finished. It should not matter which school they go to. If we want to send our kids to Christian school, then they should pay for that too. The people should be able to make decisions about where they send their kids to school and the government should be held responsible for that funding. More funding for education. And the government should tell First Nations what money they send to public schools on the First Nations behalf and they should know what it is designated for. This should not be done in secret but it should be public information.*

Education was the theme most strongly emphasized by the participants. The women feel that education is key to a healthy future for women and for the community as a whole. In particular, they feel it is important for them as women to become more educated because of their strong historical roles as leaders and the sense that regaining that role is important to community health. Education is the way to gain increased leadership among women. Education was also stressed because of the impact it has on women's ability to participate in contemporary governance successfully. The political climate is changing, as are the requirements for women to operate within that climate. Therefore, women are finding that more training is necessary should they wish to adapt to the political economy.

Education has been a strong value passed down from generation to generation. Some women mentioned the support and education they received from family members when they were younger. One woman recalled her father teaching her about college and university.

> *He used to talk about college and university for us, and I didn't even understand what those things meant because we weren't going to school. We were the kind of kids that uh, as soon as a White man came along or a fancy boat or a plane overhead, mom used to hide us under the bed because they didn't want us to go to residential school. So we didn't go to school. But what my dad used to do and I still remember he used to hang these cardboard things up on the wall and he would have his carpenters pen...and he used to write some names like A,B,C, 1,2,3 and that on and go over it with us and he used to say he didn't want any of us to be hard working like he is, he wanted us to go to university and college.*

Recommendation 1: Hold community training to redevelop women's traditional roles as decision makers.

Included in the recommendations for education were suggestions that there be community training on the First Nation's customs.

> *The membership really has to understand the rules and regulations of our band custom.*

Part of the need for this type of training centres on women redeveloping their traditional roles within the community. One such recommendation was that educational seminars that teach the women to reach back into their history to rediscover their roles as decision makers should be developed. This is seen as a

> *way for women to find their voice and be able to express themselves and be heard within their communities and families; to help overcome fear of coming forward with their ideas; to develop self-esteem and to realize that their thoughts are important.*

The women spoke to the need for traditional skills training centres within communities. The centres would encourage women to learn the traditional skills of their ancestors, and would serve as a way for women to gain support from other women.

The need for revitalization of women's traditional roles is one aspect of a larger program of decolonization. This, however, is not a simple process. It requires a concise understanding of the impact of colonization and a clear vision for the future. Some of the women involved in this research indicated that the people of the Lake Babine First Nation need to understand the history of colonization. One way this information could be disseminated was through a newsletter.

> *Our people would learn what the meanings of being assimilated and colonized and learn what needs to be done to be decolonized. Maybe have a paper every month about what colonization was. Because if you're going to decolonize people, they have to know what you're decolonizing them from.*

Specific issues this participant wanted to have examined included the impact of relocation, residential schools and how parenting has been changed through colonization.

Recommendation 2: INAC should sponsor mentoring programs for women seeking leadership roles.
An additional way of implementing traditional education is to develop government-sponsored mentor systems that would allow younger women to learn about their historical role from older women who have lived traditionally. Such a system would be beneficial in many ways. It would help restore the roles of elders in the community, it would build the confidence of young women and it would encourage youth to learn the traditions.

Recommendation 3: INAC should sponsor adult education programs in all First Nations communities.
Education needs to be available for all women. This means education must be brought to all five communities as not all women can leave the community to seek an education. These adult education centres could operate through contracts with regional colleges and universities. The development of this type of education system would give women who have limited opportunities for education the chance to gain education slowly—

> *a few credits here and there.*

Recommendation 4: Have INAC develop a training program for elected officers.
The need for education was not limited to those who want to become involved in governance in the future. It also included those currently involved.

> *There's a lot of changes being made because of the* Corbiere *[decision] and I'm recommending to the Department of Indian Affairs that they plan and set up a training program for future elected officers. Because...it's more complicated than it used to be, because of all the regulations of notifying off-reserve membership and it's going to be a lot of work. That's one of my recommendations...that Indian Affairs plan an orientation, a training for First Nations because I know there's a lot of elections coming up this year under the* Indian Act *and it's really complicated.*

Interpersonal skills training was viewed as valuable because

> *they would know how to relate [to the] public and deal with angry clients.*

To provide an effective foundation for leadership, education and training programs would include development of interpersonal skills for chiefs and councillors.

The Lake Babine First Nation has had success in providing life skills courses to many of its members, and women recommended that this program be made available to their leaders on a regular basis. Life skills training is important to the community because it gives people the opportunity to learn how to cope with the challenges they face every day. As some of the women indicated, problems associated with a lack of life skills were barriers to their success. Having community members trained on how to cope with jealousy, anger and resentment, and teaching them equality for the genders would help generate more opportunities for women.

One younger woman addressed the need for healing for the chief and council. She stated that it is important for the elected government to be healed so they are making the right decisions.

> *They're making decisions in the political realm based on their hurts and their past.*

Life skills, training and counselling programs were all identified as necessary supports for improving elected officers' governing capacities.

Healing

Community healing was another area of focus within this work. It is an initiative that would involve the whole community and not just women. However, women and men's concerns would first be addressed separately to give each gender the safe environment needed for healing. The two groups would come together for healing initiatives to restore relationships between men and women. Community healing is important to women's political roles because of the discrimination women face due to poor gender relations and community health. Dealing with the underlying issues would help empower the women and put them on a more equal footing with men which, in turn, would allow them to participate in community governance more easily.

Recommendation 5: The First Nation elected council establishes women's spaces for professional and peer counselling.

Some women suggested that the Wellness Centre provide space for women to volunteer time to help women who need immediate support. The women would also like the volunteers to have access to training as peer counsellors. For example, the women called for training community members to provide marriage counselling. This initiative is seen as key to preparing women for leadership roles and for providing support to women who serve as elected leaders.

Implementation of community healing is complex and, to be effective, would require support from the First Nations and Inuit Health Branch of Health Canada and, for off-reserve residents, from the provincial education and health authorities.

The women recommended healing initiatives be taken for men as well.

> *Healing men always think they shouldn't cry. Men need to have a place to go to deal with their feelings. So many men have been abused and they don't know how to deal with it.*

Chief and Council Mandates

In keeping with their view that education is a priority, the women stressed the need for qualified leaders whose roles would be clearly defined through both internal and federal policy.

Recommendation 6: Establish qualification standards for chief and council candidates.
Repeatedly, participants stressed the need for elected officers to have specific qualifications before holding office. These they linked to the need for specific training and education programs to prepare women for office.

> *The...eligibility to be a councillor should be looked at. There should be rules and there should be minimum qualifications because they're making decisions and they're making recommendations that have a lot of power and impact on the community, on people that actually are living day to day.*

Another woman indicated the same concern surrounding the qualifications for the chief's position. She believes there should be minimum qualifications and high standards to be a chief and that the Nation needs

> *to look at what their vision and also look at their...what they love, what they love the culture for, what their tradition is.*

Again, this illustrates the need for policy to allow the integration of traditional and contemporary governance.

Recommendation 7: INAC, in consultation with First Nations, establishes clear mandates for the chief and council with clearly defined roles and powers.
There is no clear division between the roles of elected and hired personnel within INAC policy. This is routinely raised as a problem by INAC ministers and personnel, as well as by social scientists (e.g., Jackson 1994; Smith 1993) and First Nations scholars (Marule 1984; Monture-Angus 1999a; Silman 1987). The women felt a clear division between politics and administration is needed. At present, Lake Babine councillors work closely with, and can overrule decisions of, the administration. This close working relationship leaves members uncertain as to the scope of administrative authority. Thus, the women believed a clear division of powers is important

> *because administration should be in a neutral area, but both arms should know what the other is doing.*

Other recommendations focussed on the role of the chief and council, and the need to have clear mandates for those roles. The women would like to see their chief and council governed by a mandate stemming from INAC and supported by the community. They stressed the need to have these mandates enforced and clarified through a code of ethics.

> *Any First Nations you really have to start having, you know the leaders have a code of ethics where you know you look for educated, qualified and experienced leaders, both in chief and council roles. Otherwise if you don't have all of it or the majority, then...the band is going to be at a standstill.*

The mandate should be ratified by the community and the community members should have the opportunity to read the mandate well in advance.

There were a number of reasons for the recommendation for this mandate. Women involved in leadership are seen as role models for younger women. Clearly identifying the roles of the chief and council would allow female leaders to present themselves as stronger leaders because their roles would be clearly delineated. Furthermore, the chief and council would be more effective in dealing with community governance if their role was defined and their responsibilities narrowed.

The tie between the younger and older generations of women was a focus for other recommendations as well.

> *The youth have the major population of the community. You really need to see a role model, and I found that it was good to see a First Nations woman viewed as a role model in the community.*

Recommendation 8: Stagger the election of councillors so not all members of council are elected simultaneously.

The women in the interviews were asked if they would like to see any changes to the current electoral system. Some felt elections should be staggered so the governing body would have some members who had had sufficient time in office to be familiar with the policies and practices of the Lake Babine First Nation and of INAC.

> *It should be rotated. Right now, the election of the chief and council is done every three years and I would like to see the chief be elected one year and then the council be another year so that there is consistency.... [The elections should be every] four or five years because three years is not long enough. Any new leader [is] going through a phase of transition, especially with our band. It's so big.*
>
> *[I]t has to be three years and more because of the cost of it.... By the time they can all get along and they can dream together, it's time for another election.*

One respondent had a different suggestion for dealing with the problem of having all the elected government members beginning their term at the same time. She suggested that there be two councillors for every one that there is now. One of the councillors would act as a "floater" so there is always someone familiar with the policies holding the portfolio.

Recommendation 9: Establish campaign regulations that would extend the campaign period and provide for neutrality and fairness.

As indicated above, triennial elections are times of considerable tension. In part, this arises from the manner in which elections are now held. The campaign period is two weeks, hardly long enough for candidates to clarify their platform or address community concerns. It is particularly difficult for candidates to speak with off-reserve members. The tension of council elections is not unique to Lake Babine. Many First Nations report difficulties and dissatisfaction with election results. The Minister of Indian and Northern Affairs has identified elections as one area of possible *Indian Act* reform.

Although the Lake Babine First Nation does have campaign and electoral procedures, community members are not always familiar with them, nor do they necessarily find some regulations and procedures clear and effective. Consequently, some women expressed concern over the way the campaigns are run.

> *Two weeks is not enough or three weeks is not enough.*

One woman went on to explain that the First Nation is too large to conduct effective campaigns in such a short period of time. With some of the communities being relatively isolated, they do not have the same access to information when there is an election. The grand council concept would be effective in the dissemination of information during elections. This woman explained that holding elections in each of the communities would give those communities a more equitable opportunity to elect a government that could meet their needs. This participant also explained:

> *There are unique communities and so we have different visions.*

Holding elections within the communities would ensure that the vision of each community is represented within the main governing body. With the current campaign being so short, there is no real possibility of each community gathering enough information about the candidates to ensure that their interests are represented. Although extending the campaign period would help alleviate some of this problem, extended campaigns should be accompanied by fair representation within the governance system. Many respondents indicated that the smaller communities need additional council members to ensure that their voice is heard.

Other issues surrounding campaigns were also addressed.

> *In the first place, there is no campaign regulation and there should be.... [It] should be passed by the whole assembly, the whole membership of the Lake Babine Nation and [there] should be qualified people who run the elections who say how the campaign should be run. Right now, it's just a competition, which is foreign to our beliefs as the Lake Babine Nation.... The way the campaign is run right now is European, and it should be brought back to our culture.*
>
> *[P]eople who are counting up the ballots shouldn't be members. It should be someone who is neutral.*

Another participant indicated that an outside body should be used to run the elections so they could be "equal and true." A third suggestion was that there be a

> *task force established [within the Nation] to review the electoral system and make recommendations for changes to the membership and get input from the members. To get concrete procedures in place [and] to make sure that nomination procedures are set up properly and have our booklet set up properly too.*

Recommendation 10: Amend the *Indian Act* to include off-reserve members in nomination processes and to provide for off-reserve representation.

Women were asked for their thoughts on the current system of nominations and regulations for serving on the council. Unless it's a First Nation operating under the custom provisions of the *Indian Act*, a person has to reside on the reserve in order to nominate electoral candidates. An individual must also live on the reserve to serve in the council. One woman indicated that off-reserve people need to be included and that people often move away from the reserve for reasons that are not their fault. Given that across Canada, more First Nations women than men live off reserve, this is a critical gender issue.

> *A lot of it has to do with health reasons, education reasons, employment reasons and they eventually move back to their communities...the other thing is the lack of housing; people can't get houses on reserve so they move off.*

Living off reserve is not always a choice. This was articulated by another woman. Echoing the arguments of First Nations legal scholar Mary Ellen Turpel, she voiced her concern:

> *I think that off-reserve people should be able to nominate because...usually when you're living off reserve it's not a choice. It's because you're forced to live off reserve or because you have no place to stay or you're not able to go home.*

One woman indicated that the history of the residential schools has affected the residency patterns of the communities. She stated that there are some people who have been exiled from their homelands because of the residential schools. As a result, she believes some people need councillors off reserve to help bring people back. However, she believes the councillors should reside on reserve if the reserve has been established and the people are able to reside there.

Recommendation 11: INAC needs to provide funding for holding off-reserve voting in order to implement the *Corbiere* decision.

In light of the *Corbiere* decision, First Nations will have to include off-reserve members in elections. This process will be costly. Within the current system, funding is only allocated for those members that live on reserve. With the changes forthcoming as a result of the *Corbiere* decision, funding for off-reserve voting will become a necessity. In addition, off-reserve members

> *will have a chance to vote the leadership and their expectation will be that they [the Nation] will have some kind of services for them.*

The ability to care for off-reserve members was mentioned by another leader.

> *The* Indian Act *does not allow for us to take care of our members off reserve and that's a restriction that I don't like.*

Recommendation 12: Restrict eligibility for elected chiefs to members of a First Nation. The women were asked for their thoughts on the eligibility rules for chief and council. The *Indian Act* stipulates that the elected chief can be virtually anyone; a chief does not have to be a member of the First Nation or reside on the reserve. The responses to this question tie in with the women's responses to having job opportunities go to outsiders rather than keeping them within the community. The women felt that outsiders do not possess the same qualifications as an insider, because they have not experienced what the Nation faces. Outsiders do not have intimate knowledge of

> *traditional ways, their language and they would not have the same sense of history as community members would.*

There was also the fear from some women that outsiders would view

> *First Nations...as a big industry where some do not have the human resources to hire their own people to manage programs.*

This indicates the understanding that those communities that do not possess the human resources to hire within the Nation may be subject to outsiders treating their Nation as a business venture and taking the money outside the community where First Nation members are not able to benefit from the revenues. Some participants thought it would be acceptable to hire outside the community (if there was no one qualified within) as long as that person was

> *First Nations [that] knows you and can gain the confidence and respect.*

They did not accept the idea of leadership from the outside.

> *How can you change anything if you don't know what each day brings?... How can you change anything without experiencing it?... You can't change the quality of water if you're not drinking it.... I think that the chief should live on reserve. How can the chief make changes if the chief doesn't live on reserve because it's definitely different.*
>
> *It should be our member because of the fact that our member knows our heartbeat.... Nobody can change us. The only person that would assist in making changes on the reserve would be the person. The heartbeat is right there with them. The blood of the Nation. Not someone else who comes in to try to make a difference when that person does not know what's going on.*

Recommendation 13: Establish employment policies to enhance women's capacity and opportunities for leadership.

Women established clear links between education, mentoring, employment practices and the need to develop leadership capacity from within. They linked governance policies to employment practices that would give First Nation's members a hiring privilege. The concerns over this issue are threefold. First, community members who understand the issues more fully should handle community issues and governance. Second, employment should be raised within the community by offering jobs to persons from the community before offering them to outsiders. Third, mentors from within the First Nation would be valuable within these positions as they would encourage more youth to become educated. Having members hold important positions encourages youth to establish similar goals. To be effective, employment policies would require supportive action from both federal and provincial authorities to ensure women on and off the reserve benefited.

> *I felt that when you look at what the Nation needs, you really have to look within first, before you start looking outside. With the chief and general manager, with any First Nation, if the Nation has a person that speaks and understands that language that is experienced, knowledgeable and educated, you know those are the three key positions that they should be looking at.*

There are many benefits to such a practice. First, the community benefits by keeping employment within the community and thus avoiding increased unemployment and all of its social ramifications. Second, it encourages the education of community members which, in turn, encourages more participation in governance. Finally, it encourages the development of role models for younger people.

Recommendation 14: The First Nation needs to establish fiscal regulations that clarify accountability of the council and administration to members and provides transparency of procedures.

Fiscal accountability is a major issue for First Nations across Canada. First Nations are frequently criticized in the media for fiscal mismanagement. The Assembly of First Nations and other Aboriginal associations fear that mandated changes to the *Indian Act* vis-à-vis fiscal regulations could be directed toward making First Nations accountable to Canada in such a way as to limit their service to their members through restrictive regulations. Women of Lake Babine share the concern that present accountability to the general public undermines effective governance.

One recurring concern was the lack of clarity in fiscal planning and accountability. Some of the tension between the chief and council and the community arises from misunderstanding the fiscal responsibilities of the elected council. At present, First Nations governments must balance their obligations to members with criticisms that they are misusing public funds generated by Canadian taxpayers.

> *We're always worried about the money. It feels like we're always wanting to do more but we're always restricted by the government guidelines and uh, restrictions as far as you know. We're not just free to do what we want with the*

> *money we get; there's always conditions, criteria, restrictions. It's hard to move around.*

One woman offered a recommendation on how to respond to this issue through internally established fiscal policy.

> *Head up some policies for spending money and being accountable to the membership. Have more input from the members on how we do business because I think that might be what they're complaining about you know.*

Women linked criticism of fiscal policies to the need for a code of ethics for elected officers.

> *The other thing I would really like to see is a code of ethics. What kind of leaders are we looking for? Technology is changing; we're in a new century. We need leaders that are going to be educated, experienced and knowledgeable. Because now it [takes] pen and paper to be a successful Nation; it can't be word of mouth anymore. Every leader has to have that knowledge and the team work approach to make First Nations successful.*

Although many of the women addressed the issue of mandates or a code of ethics for the chief and council, some women pointed to the need to implement these within the First Nation's administration as well. The transfer of health and social programs from the province and Canada was cited as an example. A staff member described the challenge of creating new policies to guide the expanding administration. She indicated that a few mistakes made within that process arose from not having guidelines consistent with traditional values.

> *[W]e failed to put in guidelines where now everything goes and we should have put in guidelines.... That...was positive, and the negative took over because we forgot to set up guidelines — organizational structure.*

Assemblies

Participants felt that, in the past, women had greater opportunity to direct community decision making. Here, they proposed the implementation of women's assemblies as an innovative way to restore traditions of women's leadership and community participation.

Recommendation 15: Establish women's assemblies empowered to guide the elected council. The assembly would be empowered to create policy by means of resolutions that would be ratified by a general assembly.

> *Q: If you could choose the way the Lake Babine Nation is governed, how would you do it?*
> *A: I'd first have an assembly. I'd make sure that an assembly of elders would happen. Next I'd have an assembly of membership and assembly of youths. And all three combined to have a final big grand assembly where changes can happen.*

Some women feel afraid to speak up for their beliefs because they have seen other women attacked for their political stand and for being a woman. This fear silences women and discourages them from participating in leadership roles. The development of the assemblies would assist women in overcoming this fear through interaction with other women. Women would also gain support from each other. Furthermore, women would feel less threatened if they were operating as part of a group, rather than trying to effect change as individuals without support.

Women-only assemblies would allow older women to mentor younger women. The assembly would give women an avenue of communication between the chief and council that they currently do not have. The assembly could, if desired, also give the women an opportunity to take issues directly to INAC so their concerns could be directly addressed by INAC officials if needed. Part of the motivation for this assembly was to give women the opportunity to participate and be heard in the community and beyond. One major worry was the feeling that women are not listened to and that there are no avenues available for women to make themselves heard.

The women also recommended planning meetings to guide the chief and council in setting yearly agendas. Planning meetings of the proposed assemblies in each community would lead to a general meeting and meetings for youth, elders, women and men. A general planning meeting for the whole First Nation would follow these community meetings.

> *There should be more done with the people, a meeting with brain storming would make the people feel better.*

A mandate for the year would be organized from these meetings, which the chief and council would follow. The chief and council would also be responsible for disseminating the information gained from the meetings.

Some women also suggested that community meetings be used more regularly to help inform the membership on the business of the chief and council, and the administration. However, there are issues surrounding attendance at these types of meetings. Therefore, the women recommended changing the atmosphere of the meetings.

> *Start with making community meetings fun — community dinner. Begin with people that already like to volunteer. Have a committee within that group to raise funds for some events.*

The need for fun events was articulated in discussions about social community events, community gatherings and recreational activities. One respondent indicated that the late Margaret Patrick used to put on community events of this nature as part of her role as elected chief.

Assemblies that represent specific interest groups would also be an avenue for communication between other community members and the elected council. The suggestions included assemblies for elders, youth, men and women. Having wide representation through a number of assemblies, in particular through the hereditary chiefs, reinforces the women's desire to see a governing council balance traditional governance with contemporary forms of government.

Traditional leadership, however, does not always allow women to be heard. One problem raised was the fact that women were silenced, or appeared to be silenced, within the *balhats* system. Men do the majority of the speaking within the *balhats*. Although much of what is said by men may be guided by women, many participants expressed concern that they were unable to speak for themselves at the *balhats*. Some participants indicated that women need to learn how to speak for themselves and gain confidence before they will be able to speak in public. A long history of silence stemming from colonization needs to be broken. One way to break that silence is to give women the opportunity to express their concerns within a safe environment. Participants felt a woman's assembly would provide the environment in which community women could gain confidence and become more involved in their governance.

Some women also expressed the need to have a men's assembly to allow men to have an equal opportunity to express their concerns and issues to INAC and the chief and council. The men's assembly would operate under the same principles as the women's assembly. However, the underlying social and political reasons for holding a men's assembly differ. The desire for a male assembly reflects the value the participants place on teamwork and inclusive decision making.

Recommendation 16: INAC needs to provide secure funding to expand women-specific social services.

Women need a safe environment to discuss their issues, and they need an avenue to communicate with chief and council. However, women also need safety from domestic abuse and other social situations that affect their well-being. It will be difficult to empower women to become involved in governance if they are not safe within their personal lives. Therefore, the First Nation should have a safe home for women. In addition, there should be a drop-in centre for women so they have a safe place to go for support and to talk about their problems. Furthermore, the women's safe place should be funded so their viability would not be threatened by their ability to raise money. The women also felt there should be a representative from the chief and council to advocate for the women's group and the initiatives it puts forth.

Cultural Revitalization

Recommendation 17: Ensure that all policy changes reflect the need for cultural revitalization.

Throughout the interviews and focus groups, participants stressed the need for cultural revitalization. In fact, the desire to have policy changes reflect traditional values and responsibilities underlies many of their policy recommendations. Cultural revitalization was seen to be at the heart of social change, whether through healing, education or political initiatives. The need for specific research and cultural action to initiate cultural revitalization was linked to colonial intrusion into resource and community management.

No issue in this regard is more significant than the question of how to manage trap lines. In 1926, the Government of British Columbia subdivided First Nations traditional lands into trap lines. The government registered these resource territories to men and the rights were restricted to patrilineal inheritance. The trap line system violated both matrilineal customary laws of the Lake Babine and other First Nations, and the rights and obligations of hereditary chiefs. Because the two legal systems have not yet been reconciled, trap line management is central to all resource and territorial issues.

Therefore, women asserted the need for historical research and documentation of resource management, particularly the history of trap line ownership, as this affects relationships between hereditary chiefs, the rest of the community and other levels of government. Trap lines signify, in a particularly harsh manner, the patriarchal legacy of colonialism, for through this system women were disqualified from their traditional roles and rights. Through historical research women seek to shape governing practices that will reflect their traditional rights and obligations and give them a direct voice in resource management. As one woman stated, once the history of the trap lines has been documented,

> *the members should ratify policies on how the trap lines should be run and how it will be run now.*

Elders and hereditary chiefs stressed the need for a council and administration empowered to develop policies grounded in customary laws. Their primary concern was to strengthen extended families. The women felt that the social services policies the Lake Babine First Nation now follows are not conducive to their culture. They explained that it would be more beneficial to develop policies specific to the Nation so families would not be separated from each other. Customary family practices are one area that should be revitalized so the health of the community can be improved. They identified child apprehension by outside authorities as the most detrimental to community health.

In the past, grandparents routinely adopted grandchildren. When grandparents adopted young children they were assisted by the extended family. Current social and economic relations have disrupted this practice, and grandparents are no longer able to raise young children as readily as they would like. Expansion of homemaker services to elders who want to take care of their grandchildren would remedy this problem. Strong extended families would enhance women's relationships in the community and offer young women a more secure environment, thus enhancing their ability to become leaders.

To improve the lives of children now apprehended, and to sustain their ties to the traditional culture, elders and hereditary chiefs would like to see the development of a support group for children who have been apprehended. The elders and hereditary chiefs would like to have meetings with the provincial Ministry of Social Services to discuss First Nations children who have been taken from their parents and to discuss plans to keep First Nations children with their extended family.

Recommendation 18: Ensure the courts recognize the traditional authority of hereditary chiefs as central to judicial judgments.

Although the Canadian justice system now recognizes the benefit of accommodating traditional laws, the women desired clearer mandates for their hereditary chiefs. Many suggestions centred on the need to have many different traditional practices recognized within the governance system and mandated through the policies of INAC and the chief and council. These would include greater involvement of hereditary chiefs and elders in the courts and in policing actions. Their concerns move beyond the current policy of the Canadian Department of Justice respecting circle sentencing. Emma LaRocque (1997) and Teressa Nahanee (1993) have criticized circle sentencing for disregarding the safety of women and children, particularly in small communities. Circle sentencing allows considerable court discretion in determining community input; the elders and hereditary chiefs suggest that First Nations develop clearer policy initiatives grounded in traditional authority. They also call for greater recognition of the hereditary chiefs' authority by the courts.

Communication
For First Nations women to gain leadership roles and to provide effective leadership, their communities must be well informed of INAC policy and its impact on their lives. The need for clear communication underlies the above recommendations respecting education policy and government restructuring.

Recommendation 19: INAC should provide community members with easily understood explanations of the *Indian Act*, which would include clear communication of changes to the Act and to policy.

> *When they go to meetings and when they come back, they do not put up meetings and do not say: "This has changed. This is how it is now." They do not tell us. Those that are our councillors do not say: "This is how it changed and this is what is talked about. What do you think?"*
>
> *More community meetings [are needed] to help clear things up.*

The need for increased communication between the chief and council and community members regarding the *Indian Act* and other policies was discussed within different contexts. The breakdown of communication between the different levels of government and community members is a substantial concern for the women. Many participants indicated that the lack of communication is an underlying cause of the lack of education of community members on INAC policy as well as internal policy. One woman stated that she would like a

> *booklet on the whole* Indian Act *and what our rights are.*

The same woman expressed concern that she is unclear about issues surrounding Lake Babine First Nation politics and policies as well as the politics and legal issues of neighbouring communities. This knowledge is critical to women's capacity to be effective leaders.

One participant indicated there should always be councillors available at the administration offices. She stated that there should be

> *one councillor at the office at all times for people to see about their frustrations. This person can report to the chief and council so that someone is listening at all times.*

Some participants spoke of the confusion and resentment community members have toward the chief and council as a result of not understanding how business is conducted.

> *A lot of it is the mistrust of people thinking always that we're abusing them and that we're just helping our own relatives, and that we're playing favouritism and*

> *just taking care of ourselves and a lot of allegations you know against the council as a whole.*

The solution was seen as lying in developing communication papers that are accessible to community members. One participant indicated a need to inform community members of the meetings that need to be confidential. For example, this participant spoke of the need to hold meetings about personnel issues, wage discussions, personal complaints and community members in confidential settings. The woman spoke of the view within the community that meetings held behind closed doors indicate that the chief and council are "up to something." Outlining which meetings are public and which need to remain private within a communication publication would help alleviate some concerns. In addition, this would serve to educate community members on INAC policy, and chief and council policy. When another participant was asked what she thought should be done to help people gain a better understanding of the policies and procedures she replied:

> *Well they should write in English first. I tried to read it and I couldn't make sense of it…it's not written for the layperson.*

A communication paper that is accessible to First Nations people would assist them in understanding their governance. As one participant explained:

> *We'd know what our rights [are]. Here is an* Indian Act *that governs us and it's so hard to understand that it's frustrating. I think [this would] work…[for] some other Nations [that] may be caught in the loopholes or in the definitions because it's not defined well enough.*

There would be further benefits to having an accessible *Indian Act*. As one woman articulated:

> *Nobody ever asked us. So very little…are [we] consulted with when changes are being made.*

Although the issue of consultation regarding changes to the *Indian Act* may remain a problem, the communication papers would allow the people to remain aware of the changes to the *Indian Act* as they occur.

Similarly, the women also suggested that INAC, and the chief and council develop a paper that explains the roles of the chief and council as well as the reasons behind specific activities, such as the need for closed-door meetings.

Government Structure

Recommendation 20: Make provision in the *Indian Act* for First Nations governments that formalize positions of opposition and expressions of dissent.

Many of the above recommendations speak to specific desires of Lake Babine women for changing internal government structures. However, they reflect the need for a flexible *Indian Act* that would provide for governing structures built on the specific traditions and desires of each First Nation. Directly and indirectly, the women's concerns and proposed policy developments also address widely held concerns that First Nations governments are subject to "familialism," factionalism and poor accountability. Therefore, the participants' views on Lake Babine government structure have implications for INAC policy.

One such suggestion was to run the elections more similarly to a party system in which an opposition would become part of the governance system.

> *I think whoever doesn't make it to be chief that ran in the election should be the opposition.... I don't know I heard one of my favourite characters [who runs a large nation-wide organization]...[explain that] each centre will have a difficult person, that keeps everybody in line and sort of on their toes. And I think if we had opposition leaders that certainly would help. That way people wouldn't ...accuse us of abusing our money and then to keep a government that would be transparent.*

Although some women focussed on the party system because it would generate an opposition, others perceived the party system as a way to develop a teamwork approach. These women envision a system where individuals are united by their visions and goals, and can work together to attain those goals. The party system is also perceived as a way to avoid the adjustment period when a new chief and council have been elected. Some women would like to see the teamwork approach guided by basic principles: the need to treat others as you would be treated, learning to pray together, learning to respect one another and learning to work together. In short, the women would like to see policies that would create more unity for their First Nation.

Recommendation 21: Let First Nations governments, in consultation with their members, drive the change process for the *Indian Act.*

The scale of First Nations governments has also been widely criticized. In a world of large government and globalization, small First Nations governments are viewed as ineffective and unduly costly. However, the Lake Babine women argue the opposite. They desire a small, more intimate, governing structure that remains close to community members. Although women have yet to attain equality within their elected council, like First Nations women elsewhere, they are more likely to hold office locally than in larger representative associations. Thus, the women sought a balance between the need for autonomous community governments and the desire for strong unity among their five communities.

One suggestion was to implement the grand council concept developed by Joseph Michell of the Lake Babine Treaty and Self-Government Office. Many of the women also wanted to see the grand council concept put into practice within their Nation because it is so large and has five communities.

> *Each community could enjoy their own autonomy, with all the proper systems in place. Then have a grand chief.*

Having representatives from each community and a body that oversees all the smaller councils gives the communities autonomy and the resources to be self-sufficient.

> *Our Nation is too big. We have five communities. One thing is they were saying that they go under Joe Michell's grand council concept and another thing is Bill Montour's tribal council concept. This all involves dividing the band up but in a nicer way. So that each community looks after their own affairs but are still under an umbrella of a tribal council or somebody looking after the whole of the Nation.*

Some women indicated that each of the five communities needs to have its own chief and council in order to be governed effectively. The Nation has outgrown the current governing system.

> *Because this is what the people have been wishing for and recommending since 1980. They want to take over their own government, their own services, programs in each of the communities. I believe that this is the answer to our Nation, because we've outgrown and I've been saying that we're still in 1960s structure. When Margaret Patrick was chief [in the 1970s] she only had a population of 800 at that time but now our population is so big and we're still under the same structure. So it's not meeting the needs.*

Another participant indicated that the council needs to be representative of the populations of the communities.

> *I think that representation has to do with the size of the communities.... It's always been hard to determine who's from where. Once that's determined, then maybe ratios can be [as well].*
>
> *The size of the council should come according to the needs of the grass-roots people. Where there are activities, such as access to medical, access to RCMP, access to everything that they could think of. The council department should be a little lower, whereas in the grass roots, the isolated communities, there should be more councillors because there are more problems This concept would allow each of the five communities to experience more autonomy in its governance.*

However, current INAC policies limit the ability of the Lake Babine government to act on this proposition. Policy dictates that First Nations must have at least 2,000 members to reorganize into tribal councils. Policy also limits the governing options of communities with very few members. Therefore, INAC policies need to be more flexible to allow individual First Nations to develop appropriate governing structures that can unite small and distanced communities under larger co-ordinating councils. Without provisions for governing structures that are open to women's participation, First Nations women will continue to be disadvantaged in their leadership aspirations. Furthermore, without access to elected positions in their communities, women cannot participate in such umbrella associations as the AFN.

Across Canada, First Nations women have expressed concerns over the powers of self-government in their communities. Lake Babine women have similar concerns respecting their ability to participate in elected government and to shape internal policies in the best interests of all women in their community. Thus, when they call for an *Indian Act* driven by First Nations, they assert their right to be part of that process. This emerges in their concern that broad education and training programs be built into governing provisions. In the words of one woman, a new Act

> *would have to be First Nations driven. Right now, many of the leaders are saying to throw it out and have First Nations initiate their own, you know the way they want to govern themselves.*

When women were asked about their ideal system of governance, they indicated that they desire equitable representation in elected government and a reconstitution of their traditional roles.

> *I would like to see a fair gender representation, both male and female and also to really start including the young people on the leadership because eventually they're going to have to start learning the system, and then an elder to provide wisdom and guidance. Because we always need an elder and that's one of the things that I feel that I was successful as a leader because I always had [an elder] there with me to counsel me, to provide advice...that's what I'd like to see both the youth...an elder and fair representation of men and women in leadership roles.*

Another participant articulated some of the same goals.

> *I think that I would try and have a ratio of men and women. Have more women and have some representation of hereditary chiefs.... Like right now there's only three women on the council, there's 10 [in total] but there's only three that are women.... You know I would have more women and more hereditary chiefs and elect one elder that will sit on the council and elect a youth. A youth representative on the council.*

Although a few women saw the solution to the imbalance between men and women on the council as being a mandated gender ratio, not all the participants viewed this as a viable solution. One woman indicated that

> *we need to change that, through teaching our people or bringing information. There's a lot of power in teaching our people.*
>
> *And change comes with a different generation and we haven't reached that generation where the people that have learned about equality have taken power.*

Another respondent indicated that the gender ratio should reflect the traditional governance system.

> *It should be set up like our traditional government, it should be equal.*

Recognition

Recommendation 22: To prepare more women for leadership roles, formal recognition of women's traditional roles and women's current achievement is needed.

Lake Babine election records show that since 1951, when the federal government first admitted First Nations women into the electoral system, only three women have been elected chief of the Lake Babine First Nation. Margaret Patrick held this office in the early 1970s. It was nearly two decades before a second woman, Emma Palmantier (formerly Williams), became chief. She has been followed by Betty Patrick, who currently holds this office. Many women feel the accomplishments of Margaret Patrick have not been recognized as they should have been. For example, following her death the Nation honoured Margaret Patrick by naming the community hall in her memory. This recognition of women is rare. Individual acts that recognize achievements in the past do not provide younger women with a full understanding of what women are achieving today.

The participants identified this lack of recognition as one barrier to women's leadership. Many suggestions for creating a more positive climate for women centred on recognizing the accomplishments of women within the community. The women expressed the importance of having these accomplishments recognized to encourage upcoming generations of leaders.

> *When women make contributions to Indian initiatives like [Margaret Patrick]...they're not recognized for it. Like after they die, they're [the community] running around trying to make a list of all of the stuff that they accomplished. To me that's too late, when they're alive they should be [recognized]...I want to see more ladies recognized for the work that they have done.*

One suggestion was to build a hall of fame in each community where members could be recognized for different achievements for everything from education to parenthood. For each category, a man and a woman would be chosen each year, and their names added to the hall of fame.

In sum, women of the Lake Babine First Nation view changes to federal and internal policies as links in a chain of complex relations that shape their lives, at times inhibiting and at times enhancing their opportunities for leadership. Their understanding of what is needed to effect meaningful change to INAC policy is rooted in strongly asserted values of honour and appreciation for the full range of women's achievements.

Gender disparity in community government is not, nor can it be, a matter of policies that evolve without consideration for women's social, economic and cultural concerns. Thus, when they look forward to having more women leading their community, they recognize that first the community must recognize the work women do on all fronts — work that links the public and private spheres through women's domestic leadership as well as through traditional and contemporary government structures and processes.

5. FUTURE DIRECTIONS: A VISION FOR THE LAKE BABINE FIRST NATION

Lake Babine women envision a future that will provide new flexibility to their governing structures. From their diverse and heartfelt recommendations for policy changes, this vision emerges as one that reflects a balance between sound, autonomous empowerment of women in community governance linked with strength as a unified nation. Women look to their own traditions and to other levels of government for models when contemplating change. They link consultation on changing the *Indian Act* to their own needs as women of the Lake Babine First Nation and to the needs of all First Nations women. Consultation between INAC and First Nations women on the women's terms is a clear priority.

> *I think we as First Nations women across Canada should have a gathering and everyone of us should make a speech or a position paper to make that change. We cannot change our culture in Canada; we don't make changes one or two. It's usually a group and a team.*

The women of the Lake Babine First Nation have not asked that INAC be dismantled or the *Indian Act* abandoned. Rather, they see a clear role for the federal government to work with First Nations in establishing sound foundations for local governance. They envision a more co-operative response from INAC. They foresee INAC acting on behalf of First Nations to strengthen First Nations governments by legislating flexible but accountable policies. They share many concerns of the general public and of First Nations scholars respecting the desire for new governing mandates, codes of ethics and fiscal policies that can better serve First Nations. They do not share, however, public perceptions that First Nations governments fail in their accountability to the general public, but stress the need for transparent relations between elected councils and their First Nation.

Women living in their homelands also recognize the need for expanding First Nations jurisdictions to off-reserve women both through greater participation in council elections, access to their First Nations' services and through direct representation.

Underlying the recommendations for *Indian Act* amendments and federal policy changes is clear recognition that the supportive policies must be implemented in the areas of education and training, social services specific to women's needs and communication. Only with this supportive social change will changes in local government structure enhance the position of women in local government.

The policy directions they recommend form a complex web of innovative changes that would honour their traditions. Many of the participants in this research envision the future of Lake Babine governance as involving the grand council concept. A grand council would ensure representation, services and funding for all the communities. Some women see a party system of governance as beneficial. This would allow people to work together and to begin to work toward their goals at the onset of their term, instead of having to wait to understand each other before being able to work toward their goals.

Changes to local structure, however, are grounded in an understanding of other levels of government. One woman explained that the party system could follow the implementation of the grand council.

> *Once we have all of these different communities with their own chiefs...and we have this large tribal council. Then we should take a look at something like this and run it like...our provincial government and our federal government because I think it works. They are not perfect, but they're united.*

For the first year after the chief and council have been elected, they are just learning about each other. This woman's vision for the future is to have

> *parties so that when the chief gets in [they can] count on everybody that's in that [party] to run.... everything in unity...because everybody has their vision.... Wouldn't it be nice to have a party where they think with one mind and have a vision and let people know exactly where they are going and that's how a person could vote.*

As we have seen, some of the main components of the women's vision for the Lake Babine First Nation include ethical standards, educational standards, knowledge, experience, transparency and accountability for the leaders.

> *If we could change that system, maybe those people that we're losing every day will be saved. And maybe those people that moved off reserve because of the inequalities will come back.*

One major vision of the women involves a governing system that incorporates traditional values. A former administrator explained the lack of change.

> *They go according to Indian Affairs instead of our traditional government system and when they [operate] according to Indian Affairs it becomes like [an] Indian Affairs operation so there is no change. But if they go according to our traditional system, change would happen because all the elders, the members and the youth would be involved because that's how our traditional governing system is.*

Part of the call to merge traditional and contemporary governance stems from the need to reinstate women's roles within governance. One woman describes the current trend in governance and compares that to the traditional way of governing.

> *It's men today, where in our elders' times we [women] were considered as spokespeople because we're a matrilineal Nation.*

APPENDIX A: THE RESEARCH PROJECT

First Nations Women and Governance: A Study of Custom and Innovation among Lake Babine Nation Women

The Lake Babine Nation chief and council have approved this research project.

Proposed Research Project

To find out how Lake Babine Nation women participate in community leadership outside of the electoral governance system.

To find out which traditional and contemporary values direct the Lake Babine Nation women leaders in their choice of leadership roles.

To reveal policy recommendations about the forms of governance and the *Indian Act* from Lake Babine Nation women.

How Research Is Being Done

The researchers will conduct interviews with Lake Babine Nation women who have participated in governance.

The researchers will conduct focus groups with Lake Babine Nation women elders, hereditary chiefs and with women who have occupied administrative positions.

The information gathered from the interviews and focus groups will be compiled and analyzed for common themes expressed by the women. These themes will then be used to develop policy recommendations for the researchers to submit to Status of Women Canada.

Research Report

The research report will be submitted to Status of Women Canada. The research report will cover:

The methods and purpose of the project.

What we have learned from the women of the Lake Babine Nation.

The women's recommendations for changes in policy and practice.

Copies will be made available to the Lake Babine Nation, the hereditary chiefs and the women who participated.

Time Line of Research

The interviews and focus groups will be conducted throughout June.

The information will be analyzed throughout June.

The rough draft of the report will be submitted to Status of Women Canada during the middle of July.

The final report will be published in November 2001 by Status of Women Canada. Copyright for future publications will be held by the Lake Babine Nation.

Who to Contact
If you have any comments or concerns you may contact:

Jo-Anne Fiske
Evelyn George

APPENDIX B: CONSENT FORM

First Nations Women and Governance: A Study of Custom and Innovation among the Lake Babine Nation Women

I agree to participate in an interview and/or focus group about the Lake Babine Nation women's participation in their community governance.

I will participate in the interview and/or focus group under the following conditions:

I will allow the interview and/or focus group to be audio and/or video recorded. I understand that the interview is being taped so that nothing is missed and so my words are not changed or misunderstood. I can turn off the recorder any time during the interview.

I do not have to participate in this research and I can leave the interview and/or focus group at any time.

I agree to allow Jo-Anne Fiske, Evelyn George and Melonie Newell to use the information from the interview in the research project, report and publication. However, I understand that my privacy and confidentiality will be protected by disguising names and any other identifying information.

When the project is completed, I wish the tape of my interview and/or focus group to be:
Returned to me (Initial here) __________
Held by the researchers (Initial here) __________
Passed on to the treaty office. Any use of my tapes by the treaty office will be with my permission only. (Initial here) __________

____

Signature: ________________________
Date: _________
Signature of witness: ________________________ Date: __________

APPENDIX C: LETTERS OF INVITATION

Hereditary Chiefs

Lake Babine Nation Women and Governance
A Research Project

June 4, 2001

Dear

You are invited to participate in the Lake Babine Nation Women and Governance project by attending a women's focus group of elders and hereditary chiefs, to be held at the Lake Babine Nation administration office on June 19th at 9 a.m.

Purpose of the Research:
To find out how Lake Babine Nation women participate in community leadership outside of the electoral governance system.

To find out which traditional and contemporary values direct the Lake Babine Nation women leaders in their choice of leadership roles.

To reveal policy recommendations about the forms of governance and the *Indian Act* from Lake Babine Nation women.

This research is being sponsored by Status of Women Canada with the support of the Lake Babine Nation's Treaty and Self-Government Office. Lunch and refreshments will be provided to those who attend.

Sincerely,

Evelyn George
Researcher
Lake Babine Nation Women and Governance Project

Administration

Lake Babine Nation Women and Governance
A Research Project

June 4, 2001

Dear

You are invited to participate in the Lake Babine Nation Women and Governance project by attending a women's focus group of past and present administrators and council members. The focus group is to be held at the Lake Babine Nation administration office on June 18th at 9 a.m.

Purpose of the Research:
To find out how Lake Babine Nation women participate in community leadership outside of the electoral governance system.

To find out which traditional and contemporary values direct the Lake Babine Nation women leaders in their choice of leadership roles.

To reveal policy recommendations about the forms of governance and the *Indian Act* from Lake Babine Nation women.

This research is being sponsored by Status of Women Canada with the support of the Lake Babine Nation's Treaty and Self-Government Office. Lunch and refreshments will be provided to those who attend.

Sincerely,

Evelyn George
Researcher
Lake Babine Nation Women and Governance Project

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First Nations Governance, the *Indian Act* and Women's Equality Rights

Wendy Cornet

ABSTRACT

The author examines the history and rationale for the section 67 exemption of *Indian Act* matters from the *Canadian Human Rights Act* in the context of First Nations women's equality interests in governance. The multifaceted nature of First Nations women's equality interests in governance issues under the *Indian Act* is identified — gender, race, nationality, residence, family status and marital status. Barriers to the full realization of First Nations women's equality rights are examined, particularly issues relating to the Indian status and the band membership entitlement system, and decision making by *Indian Act* band councils that reflects the arbitrary legal distinctions made in the Act. Both factors have had a particularly negative impact on the equality rights of First Nations women reinstated under the 1985 amendments to the *Indian Act*. The author concludes that the original rationale for the section 67 exemption is no longer valid. Recommendations are made for a consultation process with First Nations to examine this issue and to encourage dialogue within the First Nations community regarding First Nations' perspectives on human rights in a manner that would advance the equality rights interests of First Nations women.

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EXECUTIVE SUMMARY

The author examines the history and rationale of section 67 of the *Canadian Human Rights Act* which exempts, from review, a large body of *Indian Act* matters, and how this exemption affects First Nations women's equality interests in governance. The multifaceted nature of First Nations women's equality interests in governance issues under the *Indian Act* is identified — gender, race, nationality, residence, family status and marital status. Barriers to the full realization of First Nations women's equality rights are examined, particularly *Canadian Charter of Rights and Freedoms* issues regarding the Indian status and the band membership entitlement system; discriminatory decision making by some *Indian Act* band councils based on arbitrary legal distinctions made in the Act; and the lack of funding support for structured dialogue with, and in, First Nations communities on human rights issues. The paper concludes that First Nations women are in need of human rights protections in key areas addressed by the *Canadian Human Rights Act*, such as employment and provision of services. The author agrees with other observers that the original rationale for the section 67 exemption is no longer valid, and the section 67 exemption has produced anomalous and inconsistent results in terms of subject matters considered to fall within the exemption and those that do not.

There are several significant constitutional and policy issues to consider in deciding whether or how to remove or amend the exemption. For example, there are unresolved issues respecting the meaning and application of section 25 of the *Canadian Charter of Rights and Freedoms* to First Nations governments. In addition, the creation of numerous arbitrary legal categories of "Indians" under the *Indian Act* and a lack of resources to meet the basic needs of all members encourage some *Indian Act* band councils to make discriminatory decisions negatively affecting the equality interests of First Nations women and their children. It would be inconsistent to remove the section 67 exemption and require band councils to comply fully with the *Canadian Human Rights Act*, while ignoring the larger equality issues embedded in the *Indian Act* itself.

While Charter protections for First Nations women's gender equality rights are quite strong, First Nations women require more accessible human rights protections for the full range of their equality rights interests with respect to the decisions and actions of First Nations governments.

In regard to customary law issues, international experience suggests that one prerequisite for reconciling human rights values with Indigenous traditional values is an understanding by the legal system that culture is dynamic and changing. Unfortunately, the Supreme Court of Canada appears to have set up a dichotomy between Aboriginal peoples' rights and universal human rights.

The equality rights interests of First Nations women in governance include:

- equal rights and opportunities to participate in governance structures as leaders, staff, electors and citizens;

- equal rights and opportunities to participate in governance processes (elections, referendums, ratification votes, etc.);
- substantive and procedural equality in acts and decisions taken by First Nations governments affecting the rights and interests of First Nations women (e.g., equal access to programs, services and resources administered or controlled by First Nations governments, and equality before, and under laws passed by First Nations governments); and
- substantive and procedural equality in acts and decisions taken by the federal government under the *Indian Act*.

The following recommendations are made.

1. First Nations and Canada should include, in any governance reforms either under the *Indian Act* or in separate legislation, a clause addressing the rights of First Nations women to participate in First Nations governance as equals.

2. Carry out community-level work through the First Nations Governance Institute to articulate First Nations perspectives on human rights and gender equality issues, determine what needs to be done to address these issues in self-government or governance reforms and consider the future of the section 67 exemption. It is recommended that funding be provided to conduct a consultation with First Nations women and national First Nations organizations, and to help interested communities at the local level in drafting Aboriginal charters.

3. Set up consultations between the federal government and First Nations on outstanding Charter compliancy issues affecting the Indian status and band membership entitlement systems and, in particular, discuss the abolition of section 6(2) of the *Indian Act*.

4. The federal government should consider options for moving away from the *Indian Act* system of "Indian" status, "bands" and "band membership" in favour of legislation recognizing the status of First Nations as nations in Canada.

5. The federal government should consider updating its inherent right of self-government policy by recognizing First Nations jurisdiction over human rights matters in their communities, as well as taking the policy position that First Nations have obligations to respect international human rights standards just as federal and provincial governments do.

INTRODUCTION

Over the last 30 years, the equality interests of First Nations women have maintained a prominent place in policy discussions about the *Indian Act* and in discussions about First Nations self-government rights. This is primarily due to the persistent efforts of First Nations women's organizations to keep these issues in the public eye and on the federal policy agenda.

Equality rights issues affecting First Nations women have generated litigation, legislative reform and constitutional change in this period. The major achievements won by First Nations women are amendments to the *Indian Act* in 1985[1] removing sexually discriminatory provisions relating to Indian status entitlement and an amendment to the *Constitution Act, 1982*[2] guaranteeing existing Aboriginal and treaty rights equally to male and female persons. During the negotiations leading to the Charlottetown Accord in 1992, First Nations women successfully struggled to win agreement on a proposed clause to guarantee women's equality rights under the proposed self-government amendments. (The Charlottetown Accord was not ratified and the proposed amendments were not enacted.) Indian and Northern Affairs Canada (INAC) now has a policy requiring that a gender equality analysis be integrated into the development and implementation of departmental policies, programs, communication plans, regulations and legislation. The policy also requires that where gender equality issues arise, "solutions be developed and implemented to prevent and remedy any inequality" (INAC 1999: 4). There have been some failures, such as efforts by the Native Women's Association of Canada (NWAC) to have the marital property rights of First Nations women respecting the occupation of reserve lands specifically addressed in the *First Nations Land Management Act*[3] rather than leaving the matter to be determined by individual First Nations through their own law-making powers.

Despite the 1985 amendments, there are continuing concerns about the equal status of women under the *Indian Act*. These concerns include residual sex discrimination in the Indian status entitlement provisions, access to band membership, participation in self-government or governance-related measures, such as the development of band membership codes, access to programs and resources controlled by band council governments on reserve and division of matrimonial real property on reserve. In May 2000, the Minister of Indian Affairs appointed the Special Representative on the Protection of First Nations Women's Rights, "to make recommendations on the protection of rights for First Nations women both under the Indian Act and outside of it" (INAC 2000b). In a news release announcing the appointment of Mavis Erickson, Minister Nault stated: "The current legislative framework of the Indian Act does not reflect the reality of the role that First Nation women play in their communities" (INAC 2000b). The Report of the Special Representative has been submitted to the Minister but has not yet been released to the public.

With the announcement in April 2001 by the Minister of Indian Affairs of the First Nations Governance Initiative to amend the *Indian Act*, the equality rights interests of First Nations women should once more be a focus of discussion. The federal government has initiated a consultation process to discuss reforms in three main areas: elections, accountability and the legal status of First Nations.

The Supreme Court of Canada decision in *Corbiere* has made a general reform of the Act's election provisions necessary. In *Corbiere*, the provision barring off-reserve band members from voting in band council elections was found to be unconstitutional.[4] There are several other election provisions apart from the one addressed in *Corbiere* that either exclude off-reserve band members from participation in certain political activities or can affect their ability to participate.[5]

However, federal concerns in this initiative are much broader than Charter compliance in the area of *Indian Act* elections. The government is using the opportunity to address other federal priorities such as accountability and the legal status of *Indian Act* band governments.

The introduction of a bill is expected sometime in 2001 or 2002. How this legislation affects the equality interests of First Nations women will no doubt assume a prominent place in public discussions and government decision making over the course of this legislative reform process. Background documents issued by INAC have identified women's issues as a specific area of concern (among others), for the purposes of public consultation, on the governance initiative.

A long-standing concern of First Nations women is the large area of exemption from review of governmental decisions and actions made under the *Indian Act* from the *Canadian Human Rights Act*. Since its adoption, the *Canadian Human Rights Act* (CHRA) has contained a provision exempting acts and decisions made pursuant to the *Indian Act* from the application of the *Canadian Human Rights Act*. Section 67 reads: "Nothing in this Act affects any provision of the *Indian Act* or any provision made under or pursuant to that Act."[6] This paper examines the implications of the *Indian Act* exemption for First Nations women's equality rights interests in First Nations governance.

This paper suggests that a comprehensive and integrated approach should be taken in any legislative or policy changes to address the multifaceted needs of First Nations women as equality seekers. The equality interests of First Nations women in governance issues under the *Indian Act* are not restricted to the potential for gender-based discrimination by *Indian Act* band councils. This paper agrees with other observers that First Nations women are vulnerable to many forms of discrimination by federal legislation and policies as well as by First Nations governments. This paper also agrees that the section 67 exemption has outlived its usefulness and that interested First Nations should be assisted in the development of Aboriginal charters for those not wishing to have the CHRA apply.

In considering amendments to both the *Indian Act* and the *Canadian Human Rights Act* to remove the section 67 exemption, other fundamental equality issues facing First Nations women must be addressed and be the subject of consultations with First Nations. These include some serious Charter issues concerning the *Indian Act* provisions governing entitlement to "Indian" status and "band membership."

1. REVIEW OF THE CANADIAN HUMAN RIGHTS ACT

A comprehensive review of the *Canadian Human Rights Act* has been carried out by a high-profile panel headed by former Supreme Court of Canada Justice LaForest. The Canadian Human Rights Act Review Panel submitted its report last year and the *Indian Act* exemption formed part of its review. The federal government is now considering the report. The Review Panel's report and the background research commissioned by the Panel are significant developments, as it is the first time the *Indian Act* exemption has received any in-depth policy discussion.

The Canadian Human Rights Act Review Panel recommended that the section 67 exemption be removed to make the Act apply to all decisions and acts of the federal government and of Aboriginal governments that affect the individual rights of First Nations people. The Panel also recommended that the Minister of Justice ensure that the Act applies to self-governing Aboriginal communities until such time as an Aboriginal human rights code applies, as agreed by the federal government and First Nations governments. To ensure a balance between individual rights and collective rights, the Panel recommended that a provision be added to the Act to help with its interpretation in a First Nations context.

The Panel cautioned that such a provision should be drafted to ensure it does not operate as a new justification that would undermine the achievement of equality.[7] The Panel felt it did not have time to explore properly some important issues. These included whether new grounds of discrimination should be recognized under the Act, such as Aboriginal residence and Indian status. The Panel appears to have adopted some of the recommendations made to it by the Native Women's Association of Canada.[8]

The federal government's review of the *Indian Act* and the *Canadian Human Rights Act* together provide an opportunity to consider carefully how the equality rights interests of First Nations women are affected by the *Indian Act* exemption in the *Canadian Human Rights Act*.

Background to the Section 67 CHRA Exemption

The purpose of the *Canadian Human Rights Act* is stated in section 2 as ensuring the laws of Canada within federal jurisdiction are applied in a way to ensure that all individuals have

> an opportunity equal with other individuals to make for themselves the lives that they are able and wish to have and to have their needs accommodated, consistent with their duties and obligations as members of society, without being hindered in or prevented from doing so by discriminatory practices based on race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status, disability or conviction for an offence for which a pardon has been granted.[9]

The Act applies to all employers and providers of goods, services, facilities and accommodation within the legislative power of the Parliament (Dept. of Justice 2000). The

Act therefore has the potential to affect First Nations governments as employers and in their governmental functions as suppliers of services. The Supreme Court of Canada has described the rights protected by the *Canadian Human Rights Act* as being "almost constitutional" in nature.[10]

The *Indian Act* exemption has existed from the introduction of the *Canadian Human Rights Act* in Parliament and its enactment in 1977. As the Canadian Human Rights Act Review Panel noted, the exemption was considered a temporary measure at the time the Bill was introduced (Dept. of Justice 2000). The aim was to ensure that the results of the Joint Cabinet/National Indian Brotherhood Committee reviewing the *Indian Act* were not pre-empted. The Committee had been established in the mid-1970s to reach agreement on comprehensive reform of the *Indian Act* but no amendments resulted from its work.

During debate of the Canadian Human Rights Act Bill, questions were raised by opposition members (and by civil rights groups and women's groups in committee proceedings) about the need to remedy the Indian status and band membership entitlement provisions that blatantly discriminated on the grounds of sex. The Minister of Justice, Ron Basford delivered a strong message to the National Indian Brotherhood (NIB, the precursor to the Assembly of First Nations) that it should work toward eliminating this exemption sooner rather than later. In his appearance before the Standing Committee on Justice and Legal Affairs regarding the proposed CHRA, Minister Basford referred to the ongoing *Indian Act* reform discussions with the NIB over the previous two years and spoke of the need to "correct" certain features of the *Indian Act* (Standing Committee on Justice and Legal Affairs 1976-77a: 45). In answer to a question about the proposed *Indian Act* exemption in the CHRA, he suggested that the NIB consider that it was on notice "that Parliament is not going to look very favourably on continuing this exemption forever or very long" (Standing Committee on Justice and Legal Affairs 1976-77a: 45-46).

Gordon Fairweather (then a Member of Parliament, later to become the first Canadian Human Rights Commissioner) proposed an amendment to strike the *Indian Act* exemption clause to remedy the discrimination against Indian women with regard to Indian status and band membership entitlement. First Nations women appeared before the Standing Committee on Justice and Legal Affairs as part of the delegation of the National Action Committee on the Status of Women in December 1977 (Standing Committee on Justice and Legal Affairs 1976-77a: 14-15). These witnesses included Jenny Margetts, President of Indian Rights for Indian Women and the prominent activist Mary Two-Axe-Early. First Nations women were not included in the discussions between the NIB and Cabinet, and Margetts and Two-Axe-Early feared their interests would not be addressed when (and if) amendments eventually emerged from the "male-dominated talks" (Standing Committee on Justice and Legal Affairs 1976-77a: 14-15). It appears that the lobby efforts of First Nations women underlaid Fairweather's persistent pressing for the complete removal of the *Indian Act* exemption. Later, as the federal Human Rights Chief Commissioner, Fairweather appeared before the Sub-committee on Indian Women and the Indian Act, and reminded MPs of this legislative history. Fairweather continued to support complete removal of the exemption (Sub-Committee on Indian Women 1980-81-82: 5-6, 13-14).

However, Justice Minister Basford expressed concern that while simple immediate removal of the exemption might address the problem of Indian women's rights, it could also throw into jeopardy any legislative provision which says Indians shall be treated differently than others (Sub-Committee on Indian Women 1980-81-82: 46). As the law stood at this time, equality was typically understood to mean sameness of treatment in all circumstances. (This concept is now called "formal legal equality.") Thus, if provisions allowing discrimination based on sex would be invalid if the CHRA applied, it was thought that all of the *Indian Act* might be invalid as discrimination based on race. Since the adoption of the Charter in 1982, the Supreme Court of Canada has made clear that achieving real equality sometimes requires different treatment ("substantive equality").

Some of the public interest witnesses appearing before the Committee took the position that the sexually discriminatory provisions of the *Indian Act* somehow should be addressed while protecting the Act as a whole from being struck down.[11] Others supported the position of First Nations women for the complete and immediate elimination of the proposed exemption to ensure that discrimination on the grounds of sex was corrected.[12]

By March 1978, the CHRA had passed into law and included the *Indian Act* exemption. Flora McDonald, as an opposition member, raised a question in the House of Commons about what would now be done to alleviate the sexually discriminatory aspects of the Act. She reported that the President of the National Indian Brotherhood had recently described the joint Cabinet-NIB committee on the *Indian Act* as "a farce, a process that is simply not working." The Minister of Indian Affairs expressed surprise at this characterization and assured the Member that the rights of Indian women were on the *Indian Act* reform agenda and would be addressed in June of that year (House of Commons 1978: 51-52). The long-awaited amendments did not take place for another seven years.

The lobby of First Nations women continued during this time. The adoption of the *Canadian Charter of Rights and Freedoms* in 1982 added more pressure on the federal government to work through the issue of sex discrimination with the First Nations community. Amendments were finally passed in 1985. The 1985 amendments (still popularly referred to as Bill C-31) were regarded as a compromise between the position of the NIB (representing reserve-based First Nations governments), which opposed further federal intrusion and control over entitlement issues, and the position of NWAC. NWAC insisted on the removal of discrimination and the protection of the equality rights of women and their children before control over membership or other aspects of governance/self-government was handed back to First Nations governments. In 1988, the Minister of Indian Affairs (William McKnight) described Bill C-31 as a compromise and effectively acknowledged the existence of residual sex discrimination (Standing Committee on Aboriginal Affairs 1988: 13). The issue of residual sex discrimination in the Act and in administrative practices under the Act continues to be a major concern to First Nations people and First Nations women in particular, in addition to many other equality rights interests affected by the *Indian Act*. The government has not responded to these concerns in any substantive way since the passage of Bill C-31.

Interpretation and Application of the CHRA Section 67 Exemption

The Canadian Human Rights Act Review Panel examined section 67 and how it has been interpreted and applied by the courts. In its final report released in 2000, the Panel noted the section 67 exemption had originally been intended to be temporary. The Review Panel noted the many discrimination issues raised before the Canadian Human Rights Commission by First Nations people with regard to decisions of band councils or the federal government affecting employment and the provision of services. It also noted that a substantial number of these claims were being raised by reinstated First Nations women.

The courts have interpreted the scope of the section 67 exemption narrowly. Rather than interpreting section 67 as exempting any matter governed by the *Indian Act*, the courts have limited its application to decisions or acts of band councils or the federal government that are made under, and strictly within the authority of, a specific provision of the *Indian Act* or its regulations (Dept. of Justice 2000; Chartrand 1999).

This approach ensures the exemption is applied no more than is strictly required in order not to deprive First Nations people of human rights protection they may very well need. However, as the Review Panel concluded, this interpretation has also resulted in an inconsistent and arbitrary application of the *Canadian Human Rights Act* to the First Nations people, communities and governments that are subject to the *Indian Act*.

An examination of cases involving section 67 supports this conclusion. For example, while an allegation of discriminatory denial of education services to children of reinstated women living on reserve does not fall within the exemption and is reviewable under the *Canadian Human Rights Act*, (Dept. of Justice 2000; Chartrand 1999) an allegation of discriminatory denial of on-reserve housing to a reinstated woman with band membership status does fall within the exemption and is not reviewable under the CHRA.[13]

The question of whether any given act or decision of an *Indian Act* band council, is subject to review under the *Canadian Human Rights Act* basically turns on whether or not the *Indian Act* explicitly provides for the band council's authority for the act or decision. This means complex jurisdictional questions must be addressed each time a complainant tries to apply the *Canadian Human Rights Act* to a band council. The result has not produced a coherent set of equality rights principles in an *Indian Act* setting.

The jurisdiction of band councils under the *Indian Act* is narrow and reflects a colonial mentality. The Act largely limits the powers of First Nations governments to very minor local matters and subjects many of these authorities to ministerial override. In contrast, most First Nations self-government legislation does not provide for an exemption from the *Canadian Human Rights Act* (Chartrand 1999). This produces the anomalous result that the more expansive governmental authorities of First Nations who have escaped the *Indian Act* are subject to review under the CHRA while the limited and delegated jurisdiction of First Nations under the *Indian Act* are not. There does not appear to be any policy rationale consistent with both federal self-government and human rights policies that can explain why this distinction should exist.

It is difficult to anticipate how the CHRA might be applied to the larger equality issues embedded in *Indian Act* provisions respecting sex and race discrimination, if section 67 was simply removed. The Act is primarily designed to deal with discrimination in employment and the provision of goods and services. An equality rights challenge brought under the CHRA may not be as effective a tool as a challenge based on the Charter for getting to the roots of a fundamental dispute over the recognition of rights. Examples of issues that would likely be better served by a Charter analysis than an application of the CHRA in its current form are:

- residual sex discrimination in the determination of Indian status entitlement; and
- discrimination based on race or descent in the determination of Indian status entitlement.

The inherent arbitrariness of the one-quarter descent rule in section 6(2) of the *Indian Act* is a major equality rights issue of concern to First Nations women (as it is for the First Nations community as a whole[14]). Under this provision, children of two successive generations of "Indian" and "non-Indian" parents are not entitled to be registered as "Indians" under the Act. The *Indian Act* has created numerous arbitrary classes of "Indians" — status and non-status Indians, band members with Indian status and band members without Indian status, section 6(1) Indians and section 6(2) Indians. These legal distinctions provide a foundation for further discriminatory treatment by band councils in their decision-making power under the *Indian Act*. An example of this is demonstrated by the facts in the *Courtois* case.[15]

The two complainants in *Courtois* challenged a two-year moratorium imposed by a band council on the provision of services to reinstated women in all areas under the administrative responsibility of the band council. The claim of discriminatory conduct related to the band council's decisions to deny the children of the complainants access to the band-controlled school on reserve. Both women had been reinstated under the 1985 amendments to the *Indian Act*. One complainant was resident on the reserve and the other resident off reserve. Before the 1985 amendments, the band council had accepted school children from various backgrounds including so-called "non-status Indians" resident on reserve. After the 1985 amendments, the band council began excluding individuals without band membership regardless of whether they had Indian status under the Act. The Tribunal held that only INAC and not the band council had authority under the *Indian Act* to supply education services. Section 67 of the *Canadian Human Rights Act* could not be invoked by the band council in areas where it did not have authority and thus could not be applied to a decision relating to the supply of education services. The Tribunal found a prima facie case of discriminatory treatment and that the denial of services could not be justified within the Act's defences for a limitation based on good faith and reasonableness in attaining a valid objective. While the Department had argued that the discrimination, if there was any, was not because the complainants were reinstated but because they were not band members, the Tribunal did not agree and found that the only effect of the moratorium was to victimize women reinstated under the 1985 legislation. The discrimination involved distinctions attached to the prohibited grounds of sex and marital status. The Tribunal held that the Department's policy of respecting the band council's decision to educate the children of reinstated women off reserve effectively created a distinction between band members and non-members not provided by the education sections of the Act.

In *Raphael* v. *Montagnais du Lac Saint-Jean Band*,[16] the federal Human Rights Tribunal found that the powers of a band council did not include the power to impose a moratorium suspending the application of the 1985 amendments to the *Indian Act*. The Tribunal determined that a fear by the band council that they would not be able to provide for the services required by reinstated members did not justify the refusal to provide various governmental services to the complainants.

In these cases where the section 67 exemption did not apply, distinctions made by band councils between band members and non-band members with Indian status, or between reinstated members and un-reinstated members, in the provision of governmental services were not legally defensible within the framework of the *Canadian Human Rights Act*. These cases demonstrate the negative impact of the various legal categories of "Indians" under the *Indian Act* and how these arbitrary legal categories affect decision making by some band councils when faced with scarce resources.

While there is a fair amount of evidence supporting the need for protection from discrimination of certain categories of "Indians," particularly reinstated First Nations women, it is federal legislation that has created these legal categories. These legal distinctions have significant impacts on personal identities, individual rights and collective rights.

There are a number of unresolved equality rights issues relating to the Charter legitimacy of the legal distinctions drawn by the *Indian Act* in the provisions determining entitlement to Indian status and band membership. With respect to Indian status entitlement in particular, there is a strong argument that the arbitrary sex-based discrimination that was addressed by the 1985 amendments has been replaced by an equally arbitrary and offensive form of discrimination based on descent or race (Moss 1997: 91-92, 93; Moss 1991: 279). A strong case also can be made that there is residual sex discrimination in the treatment of children of reinstated women with respect to band membership and Indian status (Moss 1997: 91-92, 93; Moss 1991: 279).

If the federal government wishes to encourage First Nations to adopt and apply equality rights values, it could make a more persuasive case by providing a process to discuss and address the issue of serious inequities in the Indian status and band membership entitlement provisions. These provisions form a fundamental foundation for the operation of the *Indian Act* and have an impact on local governance by making various distinctions about the scope of legal interests each category of person has in the collective and individual rights addressed by the Act.

The correction of these inequities in Indian status entitlement is beyond the current powers of First Nations. Accordingly, it would be inconsistent to require non-discrimination by band councils in employment and provision of services, while ignoring the larger equality issues embedded in the *Indian Act* itself.

In a research paper prepared for the Canadian Human Rights Act Review Panel, Mary Eberts, an equality rights expert, identified the Indian status and band membership entitlement provisions as raising significant equality rights issues. She recommended that section 6(2) (the second-generation cut-off rule) in the *Indian Act* be repealed along with the removal of the section 67 exemption in the CHRA. Eberts (2000: Summary) concluded that the 1985 amendments brought about "finer and finer differentiations among the Aboriginal community, …[have] divided families, and will result in the extinction of some First Nations as the affects [sic] of the second generation cut-off rule are realized." She also concluded that these kinds of distinctions cannot be justified by the current trend of Charter analysis represented by decisions such as *Benner* v. *Canada*.[17]

The analysis used by the Supreme Court of Canada in the *Corbiere* decision, if applied in an examination of the Indian status entitlement provisions, throws further suspicion on the Charter legitimacy of the second-generation cut-off rule and its particular effect on women and the children of women reinstated under the 1985 amendments.

2. *INDIAN ACT* GOVERNANCE PROCESSES

The *Indian Act* definition of "band council" provides for leadership selection by providing two methods of constituting a band council composed of councillors and a "chief":

- an election process set out in sections 74 to 80 of the *Indian Act*; and
- a custom method.[18]

Both methods carry implications for the equality rights of First Nations women. However, removal of the section 67 exemption will not necessarily increase the participation rates of First Nations women in band councils. The CHRA has no impact on this issue in the larger society, nor do the individual human rights protections in the Charter appear to have had an observable impact on participation rates of women in leadership positions in Canada.

Custom forms of governance raise interesting perspectives on gender balance. One wonders how a section 15 analysis would be applied to the famous Mohawk clan mother system in which only women select only male leaders and have a special role in their removal. Dialogue within and with First Nations communities seems necessary to enhance our understanding of issues that may arise with custom forms of governance and how these perspectives could enhance our national understanding of how gender equality goals can be met in different ways.

The *Indian Act* does not define "custom" or provide any guidance on how it is to be identified. The original intent of the Act's limited recognition of custom was not to protect it or support it. The ultimate goal was to convince or force First Nations to adopt the *Indian Act* elective system. After the federal government moved away from policies of coercion in this area, it established a policy to guide ministerial decision making for bands applying to rescind a section 74 ministerial order in order to "revert" or "convert" to a custom method. The Act does not require a custom method of leadership selection in the form of election but current federal policy does impose such a requirement.

As a result of this federal policy history, there are two general categories of custom bands:

- bands recognized by the federal government as having always selected leaders by custom and which never came under the section 74 elective process or had it imposed on them; and
- bands that were once under the section 74 elective system which later changed to the custom method usually by meeting the requirements or conditions of federal policy.

Many First Nations people do not equate "custom" forms of governance recognized by INAC with traditional forms of government precisely because the policy requirements produce governance processes that do not resemble the governance traditions of the peoples concerned.

The Act still provides the Minister of Indian Affairs with the power to impose a section 74 elective process on any *Indian Act* band. This is understood to include the power to repeal such an order. Federal policy assumes that First Nations brought under the section 74 elective process must seek repeal of the original ministerial order, if a change to a custom method is sought.

The current policy makes approval of a proposal to convert to custom contingent on the following elements:

- written in a clear format;
- protects the rights of individual members;
- provides for a process of appeals and a process for amending custom without involving INAC;
- is consistent with the Charter;
- applies the common-law principles of natural justice;
- approved by the community; and
- otherwise meets with the satisfaction of the Department (INAC 1996: 1).

Indian and Northern Affairs reports that these policy requirements have so far produced custom models that tend to resemble closely the section 74 *Indian Act* elective system. However, once a band has successfully negotiated its way to a custom method, it may amend its custom procedure any way it wishes so long as the amending procedure provided in the original custom code is followed.

The situation of custom bands and bands subject to the section 74 *Indian Act* election process therefore differs in this very important area of an amending power over their local governance constitution. Section 74 bands must follow all the statutory requirements for electing a chief and band council and do not have any amending power over their constitutions. For example, bands subject to section 74 cannot change the length of the term of office of band councils or any other "governance" matter provided for by the *Indian Act.*

While the *Indian Act* does not contain a general equality rights provision nor a gender equality provision, as federal legislation, it would generally be subject to the equality rights guarantees contained in Charter sections 15, 28 and 35(4). The recent decision in *Corbiere* striking down an election provision that discriminated against off-reserve band members, strongly suggests that gender equality in the operation of the *Indian Act* elective system is a strict constitutional requirement. The *Corbiere* decision was particularly significant for First Nations women reinstated under the 1985 amendments, who have had difficulty resuming residence on reserve. As a consequence, these First Nations women were barred from participating in band council elections under the impugned provision.

For custom bands, Charter equality issues are less clear. The Federal Court of Canada has determined that the power to decide what constitutes a band's custom resides in the band itself rather than the *Indian Act* band council; and this is a pre-existing power whose source is not the *Indian Act*.[19] Kent McNeil (1996: 79), a law professor specializing in Aboriginal rights, has concluded: "Apart from gender equality, which they are obliged by sections 28 and 35(4) to respect, traditional Aboriginal governments, therefore, are not constrained by the *Charter* in their exercise of the Aboriginal peoples' inherent right of self-government." This means that First Nations laws discriminating on the basis of sex would not be upheld by the courts, but that other forms of discrimination might be shielded, where an existing Aboriginal or treaty right can be established in regards to the challenged practice or law.

While the position of First Nations women appears to be quite strong with respect to gender equality, the issue remains whether further protection in the form of anti-discrimination legislation, such as the CHRA, is needed. The key question here is whether First Nations people need and want a mechanism like the CHRA to address local issues of discrimination specific to employment and provision of services, for example. Band councils are often the most significant employer in many First Nations communities as well as a key source of government services. It would be an onerous burden for First Nations women to have to resort to Charter challenges in every case of gender discrimination.

First Nations women's concerns regarding custom forms of government have focussed on the potential for preserving as "custom," patriarchal values imported from colonizing influences. In other words, First Nations women often have concerns about how to ensure the content of laws reflects gender equality values.

First Nations writers have stressed the fact that many First Nations were matriarchal in orientation prior to colonization. It has often been suggested that the current imbalance in gender relations between First Nations men and women with respect to governance and property is primarily a product of colonization, rather than First Nations customary law (Kirkness 1987; McIvor 1994, 1995; Nahanee 1995). At the same time, some First Nations women argue that *Indian Act* band governments are a significant source of gender-based discrimination against First Nations women and not just federal legislation and policies (Nahanee 1995).

These concerns were evident in the debate surrounding *Sawridge Band* v. *Canada*.[20] In this case, three band councils challenged the constitutionality of the 1985 amendments that reinstated women to Indian status and band membership to remedy the earlier sex discrimination of the Act. They argued that this gender equality measure was an abridgement of existing Aboriginal and treaty rights as it interfered with the customary law or practice of the First Nations.[21] The trial decision was successfully appealed and a new trial ordered as a result of remarks made by the trial judge who raised a reasonable apprehension of bias.[22] The key legal and political issues about the application of the Charter to First Nations laws remain outstanding, and the gender equality rights of First Nations women remain vulnerable.

First Nations Self-Government, "Governance" and the Charter

Amending parts of the *Indian Act* for specific equality rights objectives while leaving the fundamental structure of the Act intact, has proven to be a very controversial exercise (such as the 1985 amendments to the *Indian Act*).

The *Indian Act* has a long and well-documented history as a tool of assimilation, colonization and control of the diverse First Nations on whom it has been imposed (Special Committee on

Indian Self-Gov't 1983; RCAP 1997a). The conclusion of most contemporary observers is that the *Indian Act* does not reflect important values such as the inherent right to self-government or the right of peoples to self-determination. First Nations have few opportunities to choose, design or amend the governance structures and processes provided for by the *Indian Act*.

The larger issues in this regard include the following.

- The Act and its rudimentary local governance structures have been imposed on the peoples affected.
- The Act's original assimilative policy orientation is still reflected to some degree in the imposition of a racially based definition of Indian status.
- Foreign notions of "bands" and "band councils" have been imposed, rather than recognizing First Nations as political subjects, nations and peoples with a right to determine First Nations citizenship.
- There is a lack of amending power over basic governance matters (internal constitution), such as length of office, term of office, methods of election or leadership selection (with the exception of matters falling within "custom" for so-called "custom bands").

These issues have been part of past policy discussions in proposals to amend the *Indian Act*. There is a fundamental incoherency or inconsistency in any legislative policy that seeks to protect individual equality rights of First Nations women and other First Nations people in a governance system that does not recognize equality at a collective level (equality of peoples). At the same time, the long history of gender-based discrimination in the *Indian Act* has had severe and negative impacts on First Nations women. As a result, First Nations women's organizations have persuasively argued that the individual equality rights of First Nations women, particularly protection against gender-based discrimination, must be secured in any *Indian Act* reform initiative.

As mentioned above, core concepts used in the *Indian Act*, such as "Indian," "band" and "band council," are problematic from an equality rights viewpoint. Each term has a long and complex history. First Nations generally regard these terms as alien legal concepts. They were imposed as part of federal policy to interfere with, and supplant, a vast array of Indigenous political systems, legal traditions, cultural values and identities. In addition to this negative impact on the collective rights of First Nations, the imposition of these legal terms has interfered with the personal identities of First Nations people and thus carries individual equality rights implications.

The First Nations Governance Initiative announced by the federal Minister of Indian Affairs in April 2001, attempts to avoid taking on these larger policy issues by adopting a definition of "governance" that is both narrow and vague. A departmental discussion paper explains the scope of this initiative as defined by the federal government.

> When we talk about legislated governance under the Indian Act, we do not mean nation-to-nation governance, or the Inherent Right to self-government under the Canadian Constitution, or the fulfillment of treaties…. The way we are using the term 'governance' in this initiative simply means how a community is run and the rules that apply in its day to day operation for the many First Nations who are still operating under the Indian Act and will continue to do so for some time to come (INAC 2001b: 1).

The Minister has excluded discussion of issues relating to Indian status, band membership or jurisdiction as part of the federal First Nations Governance Initiative.

Governance, as the federal government is using the term, does not cover all the matters normally understood by the term "self-government." Nevertheless, the federal government's First Nations Governance Initiative does include some important matters usually forming part of the self-government agenda, such as the design and establishment of election and leadership selection systems. After all, a people's power to control its methods of leadership selection and its local constitution lies at the heart of notions of self-government and a people's right to self-determination.

Aboriginal peoples' self-government rights were clearly part of the policy framework used by the Canadian Human Rights Act Review Panel in its consideration of the section 67 exemption: "The Panel must decide whether to recommend retaining section 67, repealing it or amending it to reflect a new policy which would, in part, have to reflect developments in Aboriginal self-government" (Dept of Justice 2000).

The federal government has taken a formal policy position that it recognizes an inherent right of self-government as an existing right within the meaning of section 35 of the *Constitution Act, 1982* (INAC 1995). There are major unresolved issues regarding the relationship between First Nations' inherent right of self-government and the Charter because of a long-standing debate about the meaning of section 25 of the Charter which shields (to some yet undetermined degree) Aboriginal, treaty and other rights of Aboriginal peoples from impairment from the operation of the Charter. Section 25 of the Charter provides in part: "The guarantee in this Charter of certain rights and freedoms shall not be construed so as to abrogate or derogate from any Aboriginal, treaty or other rights or freedoms that pertain to the Aboriginal peoples of Canada."[23]

The relationship between the Charter and the self-government rights of First Nations has some bearing on the relationship of "custom band governments" under the *Indian Act* to liberal human rights values in the Charter and the *Canadian Human Rights Act*. If the exercise of custom forms of government are pre-existing rights, the application of the CHRA could have major constitutional implications.

The CHRA Review Panel noted it is also possible that the inherent right of self-government includes jurisdiction over human rights as a subject matter. Professor Chartrand, a specialist in Aboriginal rights, has pointed out that neither the federal self-government policy nor the

RCAP recommendations take a position on this important issue one way or the other (Chartrand 1999). This observation points to an important gap in policy.

The federal government could build on its policy recognizing the inherent right of self-government in a way that encourages respect for fundamental human rights by adopting two key policy positions:

- that First Nations' inherent jurisdiction includes the power to adopt human rights charters; and
- that First Nations have obligations to respect international human rights standards, just as federal and provincial governments do.

These proposed policy positions would encourage discussion within First Nations communities about human rights, and encourage the establishment of Aboriginal charters consistent with international human rights norms.

Legal Pluralism, Customary Law and Gender Equality

Concerns about the distorting impact of colonization on the definition of "custom" or "tradition" are typically encountered in situations of colonized peoples seeking to re-establish control of governance systems at a local level following a formal process of decolonization. Customary or Indigenous law and its relationship to equality rights protected by a state constitution and international human rights norms has been a significant policy issue for post-apartheid South Africa and other parts of Africa and the South Pacific. The South African experience offers some valuable insight into the types of issues that can arise when a country tries to integrate customary law and international human rights values into the national legal system. It also demonstrates the need for the national legal system to recognize the inherent capacity of Indigenous cultures and Indigenous law to change over time.

The post-apartheid South African constitution adopted in 1996 contains strong equality rights guarantees and a firm commitment to international human rights norms protecting individual rights and guaranteeing gender equality. The South African constitution also recognizes the group rights of historic tribal groups and the existence of traditional Indigenous or customary law. This is not a continuation of the "race-based" rights of the apartheid era but rather an attempt to recognize the reality of legal pluralism flowing from the existence of diverse tribes or peoples caught within the national boundaries through the historic process of colonization (Oomen 1999). Thus, while the South African constitution is primarily based on notions of liberal democracy, it also provides for the recognition of pre-colonial, pre-apartheid traditional authorities and gives them a role in supervising the treatment of Indigenous laws and customs. This authority is subject to the constitution.

Until recently, it was not clear how potential conflicts between gender equality guarantees and the constitutional protection of customary law would be resolved. After some controversial court decisions, the issue was recently addressed by the national government adopting human rights and anti-discrimination legislation that specifically subjects governments exercising customary or traditional law authorities to equality rights guarantees (*Promotion of Equality* *and Prevention of Unfair Discrimination Act, 2000* section 1, xxviii). This Act also subjects all persons (including "juristic persons") to very specific prohibitions against gender discrimination in addition to the Act's more general equality and anti-discrimination provisions. In this regard, section 8 of the *Promotion of Equality and Prevention of Unfair Discrimination Act, 2000* provides:

> Subject to section 6, no person may unfairly discriminate against any person on the ground of gender, including –
> (a) gender based violence;
> (b) female genital mutilation;
> (c) the system of preventing women from inheriting family property;
> (d) any practice, including traditional, customary or religious practice, which impairs the dignity of women and undermines the equality between women and men, including the undermining of the dignity and well-being of the girl child;
> (e) any policy or conduct that unfairly limits access of women to land rights, finance, and other resources;
> (f) discrimination on the grounds of pregnancy;
> (g) limiting women's access to social services or benefits, such as health, education and social security;
> (h) the denial of access to opportunities, including access to services or contractual opportunities for rendering services for consideration, or failing to take steps to reasonably accommodate the needs of such persons;
> (i) systemic inequality of access to opportunities by women as a result of the sexual division of labour (South Africa 2000).

The preamble to this Act also states that South Africa has international obligations under binding treaties and conventions including the *Convention on the Elimination of All Forms of Discrimination Against Women* and *the Convention on the Elimination of All Forms of Racial Discrimination*.

The recognition of customary law as a source of law within post-independent constitutions has occurred in many parts of Africa and the South Pacific. Common elements of experience in the treatment of customary law in such states include:

- a colonial history of ignoring, suppressing or marginalizing Indigenous or customary law;
- the recognition of customary law as typically reserved for matters such as family law;
- the political and economic impacts of colonialism that typically affected the gender relations of the Indigenous peoples and (depending on the cultural traditions of the society in question) either reinforced pre-existing patriarchal values or displaced matriarchal values; and
- distortions of customary law which result from the process of codification, the application of the common law doctrine of precedent or by explicit manipulation by colonial governments.

This aspect of the colonization process created common problems for post-independent states striving to integrate aspects of customary law into post-colonial systems of law. These problems include:

- defining and identifying customary law;
- proving the content of customary law;
- resolving conflicts between human rights and customary law, particularly in the area of gender equality; and
- resolving conflicts between customary law and "formal" law (Care 2000).

The flexibility of Indigenous oral traditions of cultures runs a high risk of being lost in processes attempting to give formal legal recognition using Western legal traditions. These include attempts to convert oral traditions into written legal codes (codification) and judicial attempts to describe the content of customary law. This is particularly the case in the early stages of decolonization before the parties have had sufficient opportunity to identify the patriarchal impacts of colonization on customary law and ways of addressing this problem. Gender equality rights appear to be particularly vulnerable to impairment in the codification of customary law and in judicial attempts to describe the content of customary law (Castillo 2000; Manuh 1994-95; Obiore 1995).

Thandabantu Nhlapo (1994-95), a South African lawyer with expertise in human rights, has suggested that in the renegotiation of a new value system in a legally pluralistic society, competing cultural packages should start out at least notionally equal and suggests the standard for determining when a cultural practice should not be permitted for human rights reasons should centre on a notion of harm. This approach appears to be reflected in the new *Promotion of Equality and Prevention of Unfair Discrimination Act, 2000* referred to above. The Act addresses the issue of conflicts with customary law norms by relying on several general standards to determine when a cultural practice should give way to equality rights requirements. These standards include fairness, impairment to human dignity or wellness, and a principle of equality between women and men.

Custom systems of governance present particular problems for assessing the status of gender equality and the vulnerability of First Nations women during the early stages of decolonization (implementation of self-government rights). Issues are likely to arise about how to identify pre-colonial values respecting gender relations and how to distinguish these from values introduced by colonial influences. The risk of incorporating patriarchal or other biases from the dominant legal system is a challenge for any First Nations self-government exercise. The diversity of First Nations cultures in Canada and their individual histories of contact with colonizing powers would make this task especially challenging.

There is a large body of work documenting the experience of other countries that have tried to recognize and integrate customary law into the overall legal system. This experience suggests that one of the prerequisites for reconciling human rights values with traditional values in an environment of changing economic, political and social conditions is an understanding by the legal system that culture is a dynamic entity (Fishbayn 1999).

However, this approach to identifying core cultural values in a contemporary context does not match the rather static conceptions of identifying Aboriginal cultural practices as articulated in the Supreme Court of Canada decision in *Van der Peet.*[24] The *Van der Peet* decision seems to restrict the definition of "Aboriginal" cultural practices that are protected as Aboriginal rights to only those practices that are both central to the people in question *and* not shared with other human societies. The utility of this dichotomy is questionable. One can easily imagine a cultural practice that a people regards as integral to its culture, even though it may be shared with other cultures, such as respect for the environment or a cultural norm of sharing rather than hoarding wealth. The *Van der Peet* decision suggests an unfortunate and unnecessary dichotomy between Aboriginal (peoples') rights and universal human rights.

3. GOVERNANCE AND FIRST NATIONS WOMEN'S EQUALITY RIGHTS INTERESTS

First Nations women's equality interests in governance involve participation rights in First Nations governance bodies and rights to substantive equality in decision making by First Nations governance structures (such as band councils) and decisions made by the federal government. These interests include:

- equal rights and opportunities to participate in governance structures as leaders, staff, electors and citizens;
- equal rights and opportunities to participate in governance processes (elections, referendums, ratification votes, etc.);
- substantive and procedural equality in acts and decisions taken by First Nations governments affecting the rights and interests of First Nations women (e.g., equal access to programs, services and resources administered or controlled by First Nations governments and equality before, and under, laws passed by First Nations governments); and
- substantive and procedural equality in acts and decisions taken by the federal government under the *Indian Act*.

These equality rights interests are not limited to issues of discrimination based on sex/gender. First Nations women are just as severely affected by discrimination on other recognized grounds, such as race, culture, nationality, residence (on or off reserve), age, family status and marital status. A review of cases brought under the CHRA alleging discriminatory treatment by either the federal government or by First Nations band councils provides concrete examples of the real life issues faced by First Nations women as equality seekers on various grounds — race, sex, marital status, age, band membership status and status as a reinstated Indian pursuant to C-31. These claims of discriminatory conduct have been aimed at decisions such as:

- refusal of a band council to grant a building permit;
- refusal of a band council to recognize candidacy for a membership code committee;
- refusal of a band council to issue a hunting permit;
- refusal of a band council to grant a house or to consider an application for housing;
- refusal of a band council to consider an application for an Aboriginal language course;
- refusal of a band council to allow continued residence on reserve;
- termination of employment by a band council due to age;
- refusal of a band council and the Department of Indian Affairs to admit reinstated children to an on-reserve school; and
- denial of band membership based on a "blood quantum" requirement established in a band membership code.[25]

Intersectionality of First Nations Women's Equality Interests

An examination of equality cases under the CHRA, the *Canadian Bill of Rights* and the *Canadian Charter of Rights and Freedoms* reveals that the equality interests of First Nations women are not restricted to their status as women. Just as important, the equality interests of First Nations women, as women, often cannot be easily or coherently separated from First Nations women's equality interests as members of a racialized group,[26] members of distinct nations, off-reserve residents, mothers or single mothers, to name a few.[27] In many legal and social situations in which First Nations women find themselves, they may be discriminated against on a combination of grounds. The various equality interests of First Nations women can, and often do, intersect and overlap in many situations. This means First Nations women can be subjected to stereotypes applied to First Nations people generally, plus stereotypes applied to women or stereotypes applied to First Nations women in particular, and many others such as stereotypes about women who are lone parents.

As Nitya Iyer (1997), an expert in equality rights matters, has explained, evidence of discriminatory treatment of racialized or minority women may be strong, but it may be less clear which type and how many prejudicial biases may be operating in any one case at any one time. Iyer also points out the erroneous assumptions generally underlying all Canadian equality rights legal theory — that all complainants differ from the unspoken norm (White, male, etc.) in only one aspect.

The Supreme Court of Canada has acknowledged the fact of multiple grounds of discrimination and seems aware of the need for a distinct analytical approach in dealing with such cases.[28] The issue has been identified but the jurisprudence has not yet been developed. An opportunity for the Court to address what Professor Joanne St. Lewis (an equality rights expert) refers to as "compound discrimination" arises in a case argued by St. Lewis on behalf of the Centre for Research Action on Race Relations (CRARR) as an intervenor in *Lavoie* v. *Canada*.[29]

The government has been leery of taking on issues of discrimination in a First Nations context unless compelled by intense political pressure or a Supreme Court decision. There is a particular reluctance to take on the sensitive issue of Indian status entitlement. Conventional wisdom is that the positions of the AFN and NWAC are extremely polarized regarding the relative priority of rights to be secured. An impossible choice is usually presented to First Nations women and First Nations people generally when these issues arise — to place priority on self-government or on individual equality rights. This paper proposes that this perception and the problems arising from it, could be lessened if a more comprehensive and integrated approach was taken to equality rights issues in a First Nations context, and a less Eurocentric approach to what constitutes legitimate notions of human rights.

A further difficulty in advancing the debate on how to protect First Nations women's equality interests is the perceived conflict between individual rights and collective rights. Another important issue is whether the notion of rights and the centrality accorded the individual in Western legal traditions is consistent with First Nations traditional cultural values and systems of governance (Turpel-Lafond 1997).

Advocates for the Native Women's Association of Canada agree that prior to colonization many First Nations cultures were distinctly matrilineal and matrilocal with respect to governance and citizenship issues. But they insist that the impacts of colonization and the current very vulnerable situation of First Nations women requires that any self-government initiative include the full protection of the individual rights of First Nations women to participate in governance without discrimination of any kind.[30] NWAC has traditionally called for the full application of the *Canadian Charter of Rights and Freedoms* to First Nations governments along with other legislative protections of individual rights through the application of the *Canadian Human Rights Act* or Aboriginal charters.

Equality rights expert John Borrows has identified the need for dialogue within the First Nations community on the meaning and utility of rights concepts in a First Nations cultural context. He also notes that despite different views on the role individual rights should play in First Nations governance structures, there is a continuing interest in using rights concepts to advance the interests of First Nations peoples as individuals and communities.

Legal advocates for NWAC have identified the *Indian Act* as a central source of women's oppression in a governance context. In her study of criminal justice issues, Teressa Nahanee (1995: 80-81) says the following about the role of the *Indian Act.*

> The examination of the Indian Act "customary" and elected governments is important for determining the role of Aboriginal women within the criminal justice system. It is under Indian Act governments that Aboriginal women have been suppressed. That oppression of Indian women's rights, in particular, comes not from the Indian communities themselves, but from the imposition of the federal machinery of government. It is mainly the white state that has imposed its laws upon the Indian community and forced Indian women to leave their communities. It is the Indian Act that has resulted in mainly men being elected to Indian Act Chiefs and Councils. It is mainly the Indian Act that has ensured that property on reserves is held by men and not by women. Clearly the Indian Act, as a law of the federal government is subject to the Charter, is discriminatory against Indian women and requires changes through legislation or litigation.

The imbalance in gender relations wrought by the discriminatory impact of the *Indian Act* in its pre-1985 form, was followed by a period of conflict over gender equality as reinstated women after 1985 attempted to return to their communities. The large numbers of women reinstated over a period of a few short years resulted in stress on program funds and barriers for reinstated women seeking access to funding or services from their First Nations governments (Fiske 1995; Eberts 2000).

There is a strong consensus of opinion that First Nations women have experienced considerable discriminatory treatment through and under *Indian Act* governance structures. There also appears to be wide agreement that the source of this problem lies as much with the system of Indian status entitlement and band membership, as it does with decisions made by band councils and chiefs using these concepts. If this is so, then a key part of any strategy to ensure the equality interests of First Nations women in *Indian Act* governance reforms would necessarily require an examination of the long-standing equality rights issues still arising in the Indian status and band membership system.

The current position of the federal government to exclude these long-standing Charter compliancy issues in the course of its consultations on the First Nations Governance Initiative detracts from federal credibility in its efforts to convince First Nations of the value for their communities of the Charter. The current federal position leaves the impression of a rather selective concern with Charter compliancy. This could negatively affect any future effort to discuss removing the section 67 *Indian Act* exemption in the *Canadian Human Rights Act*.

4. CONCLUSION

One positive purpose the section 67 exemption served was to shield the Act as a whole from challenge as discrimination based on race, allowing the Act to protect important collective rights of First Nations. Despite its many deficiencies, the *Indian Act* has served a protective purpose regarding Indian reserve lands and other collective rights important to the survival of First Nations. Preservation of these rights is clearly in the interests of First Nations women as it is for First Nations people generally.

Since the enactment of the *Canadian Human Rights Act*, significant constitutional reform has taken place and amendments to remove much of the gender-based discrimination in the Indian status entitlement provisions have been enacted. The collective rights of First Nations peoples are now constitutionally entrenched. Equality rights theory has also matured considerably since the enactment of the *Constitution Act, 1982*. For example, the Supreme Court's section 15 analysis incorporates notions of substantive equality. In combination with the guarantees contained in section 35 of the *Constitution Act, 1982*, this analysis can be used to rationalize protective measures for First Nations collective rights. This line of reasoning is clearly implicit in two recent decisions that considered section 15 in a First Nations context — *Corbiere* and *Lovelace*.[31] In other words, specific provisions of the *Indian Act* or other statutory measures to protect the collective rights of First Nations can be validly enacted. At the same time, specific provisions or actions taken under them, affecting equality rights *within* the First Nations community can be challenged on equality grounds under the Charter without necessarily jeopardizing the entire legislative scheme.

The section 67 exemption in the *Canadian Human Rights Act* on the other hand, can shield certain acts or decisions taken under the Act that impair the gender equality rights of First Nations women within their communities. As Larry Chartrand (1999) states, it can be argued that continuing the section 67 exemption goes against the policy and legislative initiative of Bill C-31, in that it allows bands to discriminate against individuals reinstated under Bill C-31 and rely on section 67 to exempt such action.

A second rationale for the exemption at the time it was enacted was the intention not to preclude discussions then proceeding with the National Indian Brotherhood on a comprehensive reform of the *Indian Act*. Given that these particular discussions have long since ended, this specific rationale has ended.

On the other hand, neither comprehensive reform of the *Indian Act* nor a national resolution of the self-government issue has taken place. There is considerable evidence of discrimination being experienced by First Nations women and their children in the provision of services at the community level since the enactment of the 1985 amendments to the *Indian Act*. The section 67 exemption prevents the use of the CHRA as a potential remedy in any area of local decision making authorized by the *Indian Act* or acts or decisions made by the federal government under the authority of the Act. For most First Nations communities, neither the substantive law of Aboriginal rights nor political processes have produced an alternative remedy to the CHRA for such situations.

The particularly vulnerable position of First Nations women and children reinstated under the 1985 amendments clearly calls for some redress. The task of addressing the anomalous operation of section 67 is long overdue. The issues then are what other legislative reforms should accompany any removal or amendment of the section 67 exemption and how a consultation process should be designed to open this discussion with First Nations and First Nations women.

As this paper has argued, First Nations women's equality rights interests on vital matters of personal identity are impaired under the *Indian Act*. The explicit gender-based discrimination in the Indian status and band membership provisions has been largely, but not completely removed. Furthermore, the gender-based discriminatory provisions such as former section 12(1)(b) have been replaced with a descent-based discrimination in the determination of Indian status entitlement that negatively affects First Nations women as it does all First Nations people. The 1985 amendments increased the number and type of arbitrary legal categories of "Indians" and have provided a foundation for discriminatory conduct within First Nations communities. While administrative decision making has been increasingly downloaded to the community level, sufficient resources to meet the most basic needs of all members have not been provided. (Housing is a prime example.) These circumstances provide ripe conditions for discriminatory decisions in the provision of resources to community members based on the various legal categories created under the Act. It would be unfair and unreasonable to insist on fairness of treatment for all status Indians or all band members by band councils while ignoring fundamental Charter issues underlying these distinctions themselves. This paper concludes that the recommendations of the Canadian Human Rights Act Review Panel do not go far enough for this very reason.

Many of the recommendations prepared by Mary Eberts (2000) for the Canadian Human Rights Act Review Panel do address this fundamental policy issue. Eberts recommended a lifting of the exemption combined with a clause similar to section 25 of the Charter, and abolition of section 6(2) of the *Indian Act* — the key provision that determines Indian status entitlement based on a one-quarter descent rule.

Professor Chartrand (1999) on the other hand rejects the addition of a provision modelled after section 25 of the Charter for several reasons.[32] He favours the lifting of the section 67 exemption combined with an interpretive clause for First Nations made subject to the CHRA on an interim basis pending the implementation of self-government rights. This is the position adopted by the Canadian Human Rights Act Review Panel in its final report.

Another option would be to refer to section 25 of the Charter and the section 35 *Constitution Act, 1982* protection of Aboriginal and treaty rights in the preamble of a new CHRA and to add an interpretive provision as Professor Chartrand and the CHRA Review Panel suggest. However, all these options for removing the section 67 exemption in the *Indian Act* need to be discussed by First Nations as part of a full consultation on the role of human rights standards in First Nations communities.

Despite the well-known differences within the First Nations community about the place of individual and collective rights in governance or self-government reforms, there are some identifiable starting points for dialogue. The following observations are offered as possible discussion points.

- Under the *Indian Act*, First Nations women have historically experienced multiple forms of discrimination based on race, gender, marital status, family status and place of residence.
- *Indian Act*-sourced discrimination has negatively affected First Nations women's opportunities to participate fully in *Indian Act* governance structures.
- The history of *Indian Act*-based discrimination continues to have an impact on the social and political situation of First Nations women.
- Unresolved policy issues regarding Indian status, band membership and First Nations concepts of citizenship are fundamentally related to governance issues under the *Indian Act*.
- As a general principle and in a contemporary context, First Nations cultures do not endorse or hold as a cultural practice that either men or women are of greater value.
- Laws should support and not detract from human dignity at an individual and collective level.
- The freedom of people to discuss issues they feel affect their dignity as human beings should be respected.
- Dialogue between individuals and peoples on the requirements for securing human dignity is desirable.

A truly comprehensive vision of equality rights theory, in a First Nations context, can only be achieved if section 6(2) is abolished *and* the notion of band membership replaced with a proper recognition of First Nations citizenship as a political status reflecting the status of First Nations as nations and peoples.

The answer to questions such as how the *Indian Act* and other colonial influences have affected First Nations perceptions of their own legal traditions and cultural values lies in the communities themselves. The information and the wide range of perspectives needed for a national-level discussion to begin to answer such questions require discussion at the community level first.

There has been no opportunity or process for structured or mediated discussions between First Nations and Canada on the outstanding issues respecting the application of the Charter to First Nations governments outside the highly charged atmosphere of constitutional reform discussions. There is no funding support to encourage dialogue within First Nations communities about human rights instruments such as the *Canadian Human Rights Act*.

These circumstances constitute practical barriers to the full realization of First Nations women's equality rights.

The task of achieving and securing substantive equality for First Nations women as women, as First Nations members and in a collective and individual sense cannot be achieved by the simple removal of an exemption and the addition of an interpretive clause to the CHRA. The dismantling of inequality under the *Indian Act* and the Canadian legal system as a whole is a huge task. It is this reality that often hinders federal attempts to convince First Nations to accept piecemeal reforms in well-intentioned efforts to address some of the worst aspects of the *Indian Act* where a complete overhaul does seem politically feasible. Regardless of these political considerations, dialogue on human rights issues within First Nations communities would seem to be a desirable policy objective for all concerned, and would certainly be in the interests of First Nations women.

Recommendations

1. Participation in governance structures as leaders, councillors or representatives is an obvious way that First Nations women can influence the content of laws and decision making that affect their equality rights in all aspects. It is recommended that First Nations and Canada consider, in any governance reforms either under the *Indian Act* or in separate legislation, a clause addressing the rights of First Nations women to participate in First Nations governance as equals.

2. There has been considerable discussion and interest by NWAC and various First Nations in the notion of developing Aboriginal charters. Important work remains to be done to assist First Nations women and First Nations communities in articulating their vision of human rights in a First Nations context and from a First Nations perspective. The establishment of a First Nations governance institute and the existence of several national Aboriginal organizations interested in such issues provide a vehicle to begin this dialogue.[33] Given recent controversy over the motives behind Indian Affairs' First Nations Governance Initiative, a body of work developed by an independent body such as a First Nations governance institute may be a productive way to proceed. First Nations women's organizations must be provided with meaningful opportunities to help design and carry out some of this work to ensure that gender equality and other equality concerns of First Nations women are properly addressed. It is recommended that funding be provided to conduct a consultation with First Nations women and national First Nations organizations, and to help interested communities at the local level in drafting Aboriginal charters.

3. Set up consultations between the federal government and First Nations on outstanding Charter compliancy issues affecting the Indian status and band membership entitlement systems and, in particular, discuss the abolition of section 6(2) of the *Indian Act*.

4. The federal government should consider options for moving away from the *Indian Act* system of "Indian" status, "bands" and "band membership" in favour of legislation recognizing the status of First Nations as nations in Canada.

5. The federal government should consider updating its inherent right of self-government policy by recognizing First Nations' inherent jurisdiction over human rights matters in their communities, as well as taking the policy position that First Nations have obligations to respect international human rights standards just as federal and provincial governments do.

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ENDNOTES

[1] *An Act to amend the Indian Act*, Statutes of Canada 1985, Chapter 27.

[2] *Constitution Act, 1982*, Schedule B, *Canada Act 1982* (U.K.) 1982, c. 11, s. 35(4).

[3] *First Nations Land Management Act,* Statutes of Canada 1999, Chapter 24.

[4] *Corbiere* v. *Canada*, [1999] 2 Supreme Court Reports, 203. The decision also recognized as a new ground upon which a claim of discrimination under section 15 of the Charter could be made – "Aboriginality-residence."

[5] See for example *Indian Act*, R.S.C. 1985, Chapter I-5, subsections 75(1), 75(2), 77(2).

[6] *Canadian Human Rights Act*, Revised Statutes of Canada 1985, Chapter H-6, section 67.

[7] Ibid.

[8] See the description of NWAC recommendations on the CHRA in Eberts (2000).

[9] *Canadian Human Rights Act*, Revised Statutes of Canada 1985, Chapter H-6.

[10] *Robichaud* v. *Canada (Treasury Board)* [1987] 2 Supreme Court Reports 84 at 90 per Mr. Justice LaForest.

[11] See for example, Canada (1977). The Canadian Bar Association and the Advisory Council on the Status of Women (ACSW) also took this position, despite prodding by Gordon Fairweather in committee for their support for complete and immediate elimination of the exemption. The ACSW said it could understand the general exclusion of the *Indian Act* but did not understand nor condone the lack of action to repeal the sexually discriminatory provisions of the *Indian Act*.

[12] See for example, the Canadian Federation of Civil Liberties and Human Rights Associations (Canada 1976-77c).

[13] *Canada (Human Rights Commission)* v. *Gordon Band Council* (Federal Court of Appeal).

[14] See for example, AFN/INAC (2000).

[15] *Courtois* v. *Canada (Dept. of Indian Affairs and Northern Development)* [1991] 1 *Canadian Native Law Reporter*. 40 (Canadian Human Rights Tribunal). Mary Eberts (2000) explained the role of the federal government and *Indian Act* band councils in imposing various forms of discrimination on First Nations women in some detail.

[16] *Raphael* v. *Montagnais du Lac Saint-Jean Band* (1975) 23 Canadian Human Rights Reporter, D/259 (Canadian Human Rights Tribunal).

[17] [1997] 1 Supreme Court Reports, 358.

[18] *Indian Act*, R.S.C. 1985, Chapter I-5, section 2.

[19] *Bone* v. *Sioux* (1996) 107 Federal Trial Reports, 133 (Federal Court Trial Division).

[20] See for example, Nahanee (1996: 34-37).

[21] *Sawridge Band* v. *Canada* [1995] 4 Canadian Native Law Reporter 121 (Federal Court Trial Division).

[22] *Sawridge Band* v. *R.* [1997] 215 National Reporter 133 (Federal Court of Appeal).

[23] *Constitution Act, 1982*, Schedule B, *Canada Act 1982* (U.K.) 1982, c. 11, s. 25.

[24] *R.* v. *Van der Peet*, [1996] 2 Supreme Court Reports 507.

[25] See for example, *Raphael* v. *Montagnais du Lac Saint-Jean Band* (1975) 23 Canadian Human Rights Reporter. D/259 (Can. Trib.); *Desjarlais* v. *Piapot Band No. 75* (1989) 12 Canadian Human Rights Reporter. D/466 (F.C.A.); *Courtois* v. *Canada (Dept. of Indian Affairs and Northern Development)* [1991] 1 Canadian Native Law Reporter. 40 (Canadian Human Rights Tribunal); *Jacobs* v. *Mohawk Council of Kahnawake* [1998] 3 Canadian Native Law Reporter. 68.

[26] "Racialization" is the process by which attributes such as skin colour, language, birthplace and cultural practices are given social significance as markers of distinction (Backhouse 1999: 148). Race is a social construct with no biological foundation (Lopez 1994; Powell 1997: 104-105).

[27] For a discussion of the complex identity issues facing First Nations women as a result of federal law and European ways of legal thinking, see Turpel-Lafond (1997: 64).

[28] See for example, the comments of Madame Justice L'Heureux-Dubé in *Corbiere* v. *Canada*, [1999] 2 Supreme Court Reports at paragraph 67.

[29] *Lavoie* v. *Canada*, Court File No. 27427, on appeal from the Federal Court of Appeal, judgment reserved by the Supreme Court of Canada June 12, 2001 S.C.C. Bulletin 2001 p. 1121.

[30] See Nahanee (1993: 359; 1997: 90); McIvor (1996: 77). For the opposing view, see Turpel-Lafond (1997: 64) and Starr (1992: 153).

[31] *Corbiere* v. *Canada*, [1999] 2 Supreme Court Reports 203; *Lovelace* v. *Ontario* [2000] Supreme Court Reports 950.

[32] He believes it would either not be necessary because of the Charter provision, or depending on how it was interpreted, could act as a blanket shield like the current section 67 of the CHRA.

[33] The federal government made a commitment to establish "governance resource centres" in *Gathering Strength: Canada's Aboriginal Action Plan* (INAC 1997: 15). Information on the First Nations Governance Institute can be found at its Web site <http://www.fngi.ca>.